

THE TROUBLE WITH “RETURNING TO EUROPE”:  
NEW EUROPEAN UNION MEMBERS’ RELUCTANT EMBRACE OF NUCLEAR  
SAFETY AND MINORITY RIGHTS

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THE TROUBLE WITH “RETURNING TO EUROPE”:  
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Why do some norms make international advances more easily than others? What do nuclear safety and human rights have in common? Norms do not simply spread, they are adopted by governments and internalized by societies and while both steps are necessary for norm promotion, neither is sufficient. My argument disputes the dichotomy implicit in existing literature between “enlightened” civil society and norm-violating governments and suggests that often the roles are reversed. I also challenge the notion that once norms reach the international realm, their evolution stops. I test the theory by applying it to the 2004 enlargement of the European Union (EU), in which policies were presented to the acceding Eastern European states in a non-negotiable package deal. The primary, and contrasting case studies are in *nuclear safety* and *ethnic minority rights*, both of which have met only intermittent success but each for different reasons. The dissertation combines two levels of comparison – between norm types and across countries (Lithuania, Slovakia, Czech Republic). I use a mix of quantitative (computer-assisted text analysis, factor analysis) and qualitative methods. In terms of broader impact, the project develops the norm promotion angle to assess the legitimacy of conditionality arrangements, which international institutions impose on divided and relatively resource-poor societies.

## BIOGRAPHICAL SKETCH

In addition to her Cornell University degrees in Government (M.A. 2008, Ph.D. 2012), Lucia A. Seybert also holds a Master's degree in German and European Studies from Georgetown University's School of Foreign Service (2004). She earned her B.A. at a small UMUC campus located in Schwäbisch Gmünd, Germany (2002). Her work focuses on the dynamics surrounding international norm proliferation, or promotion, particularly in the context of the European Union enlargement. She is also interested in exploring the hierarchies between various norms and how the competition among them may affect vulnerable states' foreign policy.

For Starka

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## CHAPTER 1: INTRODUCTION AND OVERVIEW

“Slovak villages fly the EU flag with pride!” read one newspaper headline shortly after the 2004 enlargement of the European Union (EU), in which post-communist countries joined the club for the first time. This pride in displaying EU symbols reflected a sense of relief over the reduced vulnerability that Eastern Europeans thought the “return to Europe” had brought. The same pride underpinned also the willingness to undergo the often painful reforms, only to meet the requirements of international organizations and especially the EU. Once they digested pre-accession standards as strict as those accompanying the Union’s common agricultural policy, Slovak villagers seemed content to quietly comply with all other EU regulations entering their lives. An idyllic rustic picture? Not for long. The acceptance of EU-devised improvements ended when the annual pig-butcherer tradition was threatened by health regulators from Brussels. The new mandatory veterinarian checks before and during meat processing were likely to undermine the age-old way of producing, consuming, and most importantly, socializing around food. Yet, the response from Slovak farmers was not to tear down the flag poles. Many subsidies were still streaming in from Brussels after all. Some villagers gave up and settled for the more convenient grocery-store meat variety. But those that persisted lived grudgingly around the new norm, bending some corners and complying only with the absolutely necessary minimum demands. Their actions were influenced primarily by the social and emotional attachment to the local custom. Health concerns, which to some extent were always part of the practice, gained no increased prominence simply because some Eurocrat said they should. Today, the EU flag still flies in Slovak villages but as far as tradition (and pork) lovers are concerned, a little less proudly.

Public health regulations represent only one example of a norm that arrived from the European Union to its new member states. It can also be taken to exemplify an international norm more generally. As commonplace as the pork production example may seem, it is illustrative of broader dynamics surrounding international norm proliferation that this project seeks to explore. How deep is the reach of international norms? How careful a look should we take before we conclude that such norms are widely accepted? Is it enough to look at the level of official legislation or do we need to search the smallest Eastern European village for answers? The European regional integration project has outpaced similar efforts anywhere else but the uniqueness of this experience does not prevent us from using it to learn about the processes surrounding norm transfers across societies. The peculiarity of the enlargement experiment lay in membership conditionality, designed to enforce core changes. The candidate countries had to demonstrate actual progress on all aspects of norm adoption leading up to their EU entry. From the perspective of international norm promotion more generally, the opportunities of EU enlargement must have seemed almost dream like. And yet, one decade later, little progress has been made in some issue areas, while threats of outright reversal loom in others. The fate of the conditionality mechanism – highly praised at first and nostalgically longed-for in the end – illustrates the main puzzle tackled by this project: despite generally favorable conditions, there has been considerable variation in the success of individual norms promoted by Brussels. The answer does not lie with country differences because, although considerable, no candidate had difficulty with all norms, and no countries cruised to EU membership trouble free. We have to look to specific issue areas, or as I will argue, norm categories, for explanations about limits of international norm promotion.

To do this, we must examine the process of norms becoming universal, rather than just assuming that they are so. To fully acknowledge the complexities of the norm proliferation process we have to turn our attention to the discursive negotiation of norms at the domestic level. Similarly, their subsequent re-entry into the international, or supranational realm in an altered form is important for our understanding of why some norms spread more easily than others. I present a dynamic framework that accommodates such evolution of norms over time. It includes explanations of how some norms can suddenly gain international prominence, as the environmental norm focusing on climate change has in recent years. By the same token, my approach allows for detecting continuous changes in the criteria on which we judge certain norms as successful. Such insights can be particularly useful in studying the fall from fame of some norms, as happened in the case of the “Washington consensus” about the requisites of economic growth. Relatedly, my project will also be attentive to the power dynamics that make certain standards and values more appealing than others and to the links between individual norms and relevant regimes or hegemonic structures that they may support.

## A Second Look at International Norms

To uncover the processes that link international norm proliferation at the international level with tangible policy change domestically, we have to be prepared to straddle levels of analysis. State elites commonly populate accounts of norm compliance,<sup>1</sup> documenting the fact that they remain at the center of the decision making involved in policy shifts. Yet, as we know, top-down decisions do not guarantee efficacy and their reach becomes especially limited in a changing normative context. For this reason, I propose examining the response to international norms at the societal level as well. Individual citizens, alone or in groups, can facilitate, but also impede the adoption of a norm no less readily than their respective governments. For a norm to spread successfully, it must be accepted by both sets of actors.<sup>2</sup> This argument underscores the inadequacy of a narrow focus on political elites alone in mapping the developments during which Western norms penetrated Eastern European societies.<sup>3</sup>

### *Power in Norm Promotion (and Its Limits)*

When the Berlin Wall was crumbling and Eastern Europe took its first steps to transition away from communism, countries in Western Europe were in the midst of their own ambitious

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<sup>1</sup> Vaughn P. Shannon, "Norms Are What States Make of Them: The Political Psychology of Norm Violation," *International Studies Quarterly* 44, no. 2 (2000); Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, no. 3 (2001); Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey," *Journal of Common Market Studies* 41, no. 3 (2003).

<sup>2</sup> In methodological language, both government and societal approval is necessary but on its own, neither is sufficient for international norms to take root domestically.

<sup>3</sup> This is not to deny that in order to meet the European standards, these governmental actors found themselves acting as "transmitters of supranationally established norms." Laszlo Bruszt and David Stark, "Who Counts? Supranational Norms and Societal Needs," *East European Politics and Societies* 17, no. 1 (2003): 76.



undertaking. Occupied with finalizing the single European market, elites in what was then the European Community showed little ambition to extend the still-evolving project eastward. The momentum shifted with East European demands for the opportunity to join European integration structures and so alleviate emergent economic and political insecurities. These were demands for the EU to make demands. Reluctance on the part of old member states and uncertainty about the effect that such a daring move would have on the fate of the Union balanced against the sense of responsibility for developments in the Eastern neighborhood. The EU-15 suddenly found itself wielding unexpected influence over the institutional and economic changes in aspiring candidate countries and in a snowball-like fashion exploited the possibilities that the new power distribution offered. Abandoning initial hesitation, EU's norm promoters became overly ambitious, ignoring signs that their conditionality-based efforts were only skimming the surface of deep-seated legacies interfering with lasting normative change.

It is important to consider the limits of enlargement legitimacy in the context of post-Cold War rearrangement of priorities by countries on both sides of the former Iron Curtain. Whereas before domestic politics may have played a secondary role, trumped by international alignments, with the dissolution of the Soviet bloc reforms as indicators of progress towards democracy grew in salience. There were two aspects of East European societies' participation in this shift of international priorities. On the one hand, they were proud co-instigators of the dramatic changes that replaced authoritarian regimes with calls for human rights and civil liberties. On the other hand, they would carry the brunt of the political and economic cost that the rapid transformation entailed. They soon found out that their existing understanding of the relationship between citizens and the state conflicted with the requirements put forth by Brussels. Crucially, it was not immediately apparent to common Eastern Europeans how the reforms

necessitated by the free market economy, for example, outperformed the relative predictability of the planned system. Policies that came to be understood as rights, from free healthcare, to subsidized public transport, to cheap newlywed loans, were gradually disappearing. Freedom, they were told, was the return trade-off. But to many this meant a reduced standard of living, higher levels of crime, and increased social diversity that some found threatening.

Previous scholarship has pointed to identity-driven motivations for the Westward turn and their role in extending people's tolerance for the harsh new policies.<sup>4</sup> Time was a crucial factor in reform execution. And the more societies could offer, the more their governments and the EU would ask for. Time, however, could not solve everything. The praise showered on the conditionality mechanism<sup>5</sup> implicitly hinged on candidates' *temporary* obligation to complete requisite changes without compromise. The moment of accession proved decisive – after that, EU's most powerful levers of control disappeared and new members rediscovered their ability to object. Issues previously relegated to the back burner became the subject of electoral competition across the region, raising concerns about backsliding on previous commitments.<sup>6</sup> Compelling arguments can be made about the country-level differences behind the difficulty in meeting EU requirements<sup>7</sup> and sustaining the reforms made after 2004. Nevertheless, the focus here will be on the norms themselves. Standardizing our study of norm promotion without resorting to country-specific factors offers more effective analytical tools applicable not only to past and

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<sup>4</sup> Rawi Abdelal, *National Purpose in the World Economy: Post-Soviet States in Comparative Perspective* (Ithaca: Cornell University Press, 2005).

<sup>5</sup> Wade Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe* (New York: Cambridge University Press, 2004); Frank Schimmelfennig and Ulrich Sedelmeier, *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press, 2005); James Hughes, Gwendolyn Sasse, and Claire Gordon, eds., *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality* (New York: Palgrave Macmillan, 2004).

<sup>6</sup> Philip Levitz and Grigore Pop-Eleches, "Why No Backsliding? The European Union's Impact on Democracy and Governance before and after Accession," *Comparative Political Studies* 43, no. 4 (2010); Ulrich Sedelmeier, "After Conditionality: Post-Accession Compliance with EU Law in East Central Europe," *Journal of European Public Policy* 15, no. 6 (2008).

<sup>7</sup> Milada Vachudova, *Europe Undivided: Democracy, Leverage & Integration after Communism* (Oxford, New York: Oxford University Press, 2005).

future rounds of EU enlargement but also to other efforts to endorse international norms in the global arena.

This is not to say that domestic variables were unrelated to the success of West-originating reforms in the East. Even the desire for EU membership itself is an immediate product of political and economic trajectories that launched states from their totalitarian past into the unfamiliar but promising democratic future. They could not have simply wished away the lingering institutions and behavioral patterns that had the capacity to interfere with EU-generated norms.<sup>8</sup> Further, each communist legacy – whether economic, socio-demographic, or institutional – had the potential to affect the receptivity of these societies to new norms. This concerned especially norms that were not truly new but instead arrived as alternatives to established ways of organizing social, political, and economic life.

Rather than presenting them as the core determinants of success (or lack thereof) in the EU waiting room, however, this project treats past legacies as a filter for the incoming norms. Differences between the East and the West were inevitable, almost a given. Merely pointing them out tells us little about the process of norm adoption. The dominant element in these exchanges were the norms and I will argue that communist heritage would have greater impact on some of them than on others. In other words, the variation here rests with the norms themselves, not with countries and their respective legacies. Let us note that on the country level, intransparencies in the judicial system or lagging decentralization of government, for instance, influenced the entire accession process. They did not, however, affect all norms equally. For example, these legacies had only minor impact on the norm of cross-regional cooperation and

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<sup>8</sup> Grigore Pop-Eleches, "Between Historical Legacies and the Promise of Western Integration: Democratic Conditionality after Communism," *East European Politics and Societies* 21, no. 1 (2007); Grigore Pop-Eleches and Joshua Tucker, "Communism's Shadow: Postcommunist Legacies, Values, and Behavior," *Comparative Politics* 43, no. 4 (2011). Mark Beissinger and Stephen Kotkin, eds. *Historical Legacies of Communism*, forthcoming.

development, but they interfered heavily with reintegration of Eastern Europe's Roma. The legacy argument runs the risk of sliding down the slippery slope of ad hoc and non-generalizable explanations. On the other hand, a focus on norms, while still permitting the incorporation of country variance, allows us to examine the sensitivity of the EU-required policy changes to those country-level differences in a systematic way. In other words, I will not ask why some countries struggled with the minority rights norm, to name just one, while others did not. The main subject of inquiry here are the attributes of minority rights that made them (potentially) problematic.

The first step is to recognize that even norms that appear universal are a reflection of previous discourse and of delicate positioning among international actors (not limited to states). Norm promotion is about making arguments. Naturally, their power varies with who presents them and their impact depends on how ready the targets are to listen. Notwithstanding these facts, I will argue that the *content* of individual norms poses the main constraint on how far any of them will travel. In other words, availability of alternatives, internal inconsistencies of norms, and the effect they have on daily life of those affected are key for their performance. In the European context, the overarching rejection of the Soviet past resulted in powerful inertia to normative changes that followed. At the same time, however, there was no shortage of costly trade-offs, norm questioning, and eventually also near-heretical approaches, as Euroskepticism grew in popularity. The universal appeal of norms is neither automatic, nor permanent, nor absolute.

If a norm was deemed an essential component of EU membership it would appear broadly applicable, as long as the desire to join the Union persisted. The assumption that general support for membership equaled a blank check on the extent of possible reforms, however, was a key mistake by EU officials, and to some extent also candidate governments. Moreover, although

the gap between expectations set out by old member states and the openness of Eastern Europeans to change became apparent well before the enlargement was complete, the template for approaching the transfer of norms and regulations remained unchanged. Overextension of authority on EU's part and (initial) timidity of candidate countries in raising objections about the conditionality mechanism lay behind the failure to differentiate between issue areas. Having said that, the purpose of this project is less to serve as commentary on the various options available to EU's enlargement officials and more to underscore the limits of international norm promotion. Emphasis will remain on situations of uneven power distribution that may lead the suppliers of norms to require too much, and their recipients to offer too little.

The norms that were entering candidate countries embodied the interests of actors from the societies in which they had originated. They emerged from a consensus among the old member states and now were to become law in the acceding countries. As Mlada Bukovansky put it in relation to the global war on corruption, the problem lies in "external imposition of contingent standards on societies that are not fully participating in defining those standards."<sup>9</sup> In other words, before these norms and the related policies could gradually start appealing to the societies expected to subscribe to them, they were imposed on the EU candidates with the hope that time would mend any flaws generated by this process. The power asymmetries inherent in EU accession made such pressure possible and seemingly effective.<sup>10</sup> My goal is to outline the limits of such power. Imposition of rules may work in some policy areas but not in others. Whereas the high-stakes process of conditionality may have benefited formal judicial reform, it had limited reach on the related challenge of judicial corruption, and it hardly influenced citizen

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<sup>9</sup> Mlada Bukovansky, "The Hollowness of Anti-Corruption Discourse," *Review of International Political Economy* 13, no. 2 (2006): 184.

<sup>10</sup> Tanja A. Boerzel and Ulrich Sedelmeier, "The EU Dimension in European Politics," in *Developments in European Politics*, ed. Paul M. Heywood, et al. (New York: Palgrave Macmillan, 2006).

trust in the justice system at all. Along these lines, forcing societies to eschew their beliefs on sensitive issues can prove futile and even counterproductive in areas where domestic backlash is a real risk.

It is difficult to appreciate the weight of this dilemma without a proper understanding of how international norms emerge and spread. Norms do not inherently make for good transplant material, as they have a specific function to play. They capture not just a single idea that is easily agreed or disagreed with, but a complex system of priorities that guides our solutions to problems emerging through social, economic, or political interactions. Corresponding policies, in turn, constitute the framework for executing the norm-derived prioritizations and their legitimacy is directly linked to the ideas underlying them. Transferring these contextualized meanings haphazardly may “create contestation at best and conflict at worst.”<sup>11</sup> In order to assess the limits of legitimating the policies transferred to EU candidate countries, we have to look at the norms that underpinned them and the degree to which the Western and Eastern ones overlapped. Crucially, the room for non-compliance with these norms exists not only among the governments and political elites, but also with the societies at large.

### *Beyond the Received Wisdom*

Past research on the spread of international norms offers useful conceptualizations of the pressures faced by non-complying states and the role of transnational actors in forcing them to comply. What persists, however, is an implicit acceptance of the unchanging split between

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<sup>11</sup> Antje Wiener, "Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations," *Review of International Studies* 35, no. 01 (2009).

transgressing governments and norm-supportive societies.<sup>12</sup> In their study of norm life cycle, Finnemore and Sikkink, for example, recognize that the new norms “never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest.”<sup>13</sup> Yet, the authors fail to extend their argument to dynamics surrounding the (re)entry of internationally “cascading” norms at the domestic level. Since it is the domestic context where these norms actually end up making a difference, the authors’ focus on the interaction between states and on states as main recipients of norm-related socialization is surprising. The most problematic aspect of this approach is the assumption that once a norm reaches the international level, its evolution stops. For instance, while recognizing the role of domestic level influences, Finnemore and Sikkink argue that these are “strongest at

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<sup>12</sup> To be sure, there are some notable exceptions to the more and less overt state-centrism characterizing the foundational studies on international norms. Several authors have raised questions about the tendency toward moral universalism and “norm proselytizing” implicit in the works disregarding agency of *local* actors in norm dispersion, transformation, and adoption. Among these authors, Christian Reus-Smit stresses the need to study normative change in world politics. Christian Reus-Smit, “The Constitutional Structure of International Society and the Nature of Fundamental Institutions,” *International Organization* 51, no. 04 (1997). Gregory Flynn and Henry Farrell challenge the tendency of mainstream norms literature to treat norms as unchanging parts of a structure, while Jeffrey Checkel calls for unpacking norms arguments at the domestic level. Jeffrey T. Checkel, “Norms, Institutions, and National Identity in Contemporary Europe,” *International Studies Quarterly* 43, no. 1 (1999). Alexandru Grigorescu asks why norm diffusion sometimes stops at the point of institutionalization or habitualization by governments and why even reaching these stages is not a guarantee of norm success. Alexandru Grigorescu, “Transferring Transparency: The Impact of European Institutions on East-Central Europe,” in *Norms and Nannies: The Impact of International Organizations on the Central and East European States*, ed. Ronald H. Linden (Oxford: Rowman and Littlefield Publishers, 2002). Amitav Acharya in his discussion of norm localization contends that as norms reach the local levels they do not uncompromisingly replace existing norms systems, but rather transform and adapt to better fit existing structures. Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Ithaca: Cornell University Press, 2009). Another author to have looked attentively to the domestic level in answering the question of which norms matter, how and how much, is Jeffrey Legro, who hypothesizes that international norms are rooted in other types of social entities (regional, national, or subnational). Jeffrey W. Legro, “Which Norms Matter? Revisiting the “Failure” of Internationalism,” *International Organization* 51, no. 01 (1997). More recently, David Leheny showed in his study of Japan that governments wanting (or needing) to implement a concrete norm will find themselves transplanting it to the domestic context using norms (corresponding to local identities and material realities) already present in their respective societies. David Leheny, *Think Global, Fear Local: Sex, Violence, and Anxiety in Contemporary Japan* (Ithaca and London: Cornell University Press, 2006). My paper joins this stream of research by drawing attention to the interaction between governmental and societal responses in receiving an international norm, as well as questioning the evenness in acceptability of norms between these two groups of actors and across issue areas.

<sup>13</sup> Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 04 (1998): 897.

the early stage of a norm's life cycle and domestic influences lessen significantly once a norm has become institutionalized in the international system.”<sup>14</sup>

I will show that while this may be true of some norms (such as human rights), the argument is incomplete and even misplaced with respect to less universalizable norms (e.g. anti-corruption).<sup>15</sup> The norm cascade model cannot explain the variation in norm compliance between states. In addition, the cascade metaphor has a certain air of inevitability about it that does not reflect differences between norms and changes in their international status over time. When they were developed, both the cascade and norm spiral models were useful in mapping the spread of international norms and identifying recurrent patterns in that process. This narrow account, however, is no longer sufficient. It is just as important for us to understand which norms have more trouble gaining global appeal than others and why.<sup>16</sup> From there it is only a small step to noting that just like not all norms will meet with success, those that gain international relevance need not enjoy it forever. To shed some light on these issues, we have to pay attention to norm competition at the domestic level, which follows the initial promotion of an “international” norm.

Beyond amending the existing consensus on “international” norms, one objective of this project is to apply the proposed analytical framework to the EU context and there are sound theoretical reasons for doing so. The objectionable focus on states as main targets of socializing pressure apparent in the international norms literature is paralleled in the scholarship on Europeanization. These approaches emphasize institutional change and government behavior in

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<sup>14</sup> Ibid., 893. Also see Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998).

<sup>15</sup> These norms, following the definition of an international society by Risse, Ropp and Sikkink, come to enshrine a well-defined identity, Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, NY: Cambridge University Press, 1999).

<sup>16</sup> Mona Lena Krook and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* (2010).



assessing policy (and norm) compliance.<sup>17</sup> In studying the adoption of European Union policies at the member-state level, authors exploring Europeanization inevitably pay attention to domestic dynamics. But the promise of the distinction between governmental and non-governmental actors falls flat, when much of the analysis centers on trade-offs framed in terms of interests and pressure groups operating in domestic institutional contexts.<sup>18</sup> The member-state governments are being pressured from the outside by their peer states (be they existing members or fellow candidates) or EU institutional watchdogs. From within, the pressure is magnified by domestic actors, who both pursue their own interests and respond to the leverage raised by European institutions.<sup>19</sup> I argue this picture is not complete and in addition to differentiating between types of norms, I call for an examination of how non-state actors navigate the complex normative and institutional space in the EU.

The final theoretical stepping stone for developing the present framework is offered by Meyer et al.'s macrophenomenological approach.<sup>20</sup> The authors do not aspire to provide a grass-roots account of norm proliferation and as such the framework does not provide an answer to the question raised above. However, their detailed conceptualization of the global-level pressures and the (in)effectiveness of these is nevertheless helpful. The authors recognize the importance of state, as well as non-state actors, all of whom are subject to the legitimation pressures of the world-level social reality stemming from widely accepted models of organization and behavior. They allude to "common world forces at work"<sup>21</sup> in explaining extensive isomorphism in

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<sup>17</sup> Tanja A. Boerzel and Thomas Risse, "When Europe Hits Home: Europeanization and Domestic Change," *European Integration Online Papers* 4, no. 15 (2000).

<sup>18</sup> Albeit in an expanded policy space between the national capitals and Brussels. Christoph Knill and Dirk Lemkuhl, "How Europe Matters: Different Mechanisms of Europeanization," *European Integration online Papers (EIoP)* 3, no. 7 (1999).

<sup>19</sup> For a related argument see Steven Levitsky and Lucan A. Way, "Linkage Versus Leverage: Rethinking the International Dimension of Regime Change.," *Comparative Politics* 38, no. 4 (2006-07).

<sup>20</sup> John W. Meyer et al., "World Society and the Nation-State," *American Journal of Sociology* 103, no. 1 (1997).

<sup>21</sup> Meyer et al., 152.

domestic change and uniform definitions of rational actorhood, but they also recognize that states find it “much easier to adopt the latest structural forms than to make them work effectively.”<sup>22</sup> Their argument relies on the observation of significant similarity in state organization and behavior despite variation in factors that we would normally think govern that behavior.

Given these underlying differences, the influence of the world culture must either be so strong that it eliminates dissent and makes the implementation of the culture’s imperatives an unthinking routine, or its operation can be observed in a more superficial form. This shallow adoption of the culture’s premises is made possible by a mechanism that allows states to comply with the culture and resist it at the same time. Meyer et al.’s approach takes up the latter position and describes the mechanism at work as “decoupling” – separation of general values from practical action.<sup>23</sup> As they put it, “decoupling is endemic, because nation-states are modeled on an external culture that cannot simply be imported wholesale as a fully functioning system.”<sup>24</sup> If norms are to spread internationally, Meyer et al.’s argument implies a sort of gradual enculturation process through which the initially resisted world culture becomes increasingly pervasive.

My project applies this explanation to the recent EU enlargement episode and explores the consequences of *not* giving the candidates sufficient time to undergo the gradual enculturation that Meyer et al. refer to. To make things worse, the candidate countries were subjected to considerable external pressure and encountered ideal conditions for decoupling.<sup>25</sup>

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<sup>22</sup> Meyer et al., 154.

<sup>23</sup> Meyer et al., 154-156.

<sup>24</sup> Meyer et al., 154.

<sup>25</sup> Or shallow Europeanization, in the language of another set of scholars. Malgorzata Czernielewska, Christos J. Paraskevopoulos, and Jacek Szlachta, "The Regionalization Process in Poland: An Example of 'Shallow' Europeanization?," *Regionalization and Federal Studies* 14, no. 3 (2004). Schimmelfennig and Sedelmeier, *The Europeanization of Central and Eastern Europe*. Tanja A. Boerzel, "Participation through Law Enforcement: The Case of the European Union," *Comparative Political Studies* 39, no. 1 (2006). Also see Elena A. Iankova and Peter

The empirical relevance of this question is linked to the theoretical input of my research effort. I will show that the dense policy environment that emerged in the EU over several decades of integration can serve as a unique laboratory for studying norms that aspire (or are pushed) to gain international relevance.

It is true that shared cultural heritage and overlapping values present in EU member states are relatively homogeneous, especially when compared to the global context. To use Meyer et al.'s language, the "European culture" is much thicker than the "world culture." Nevertheless, there are important differences between EU's member states when it comes to recent historical experiences, political cultures, or social and economic conventions and priorities. And though it is not fair to draw a clear dividing line between old and new member states, the Eastern enlargement has presented the greatest test so far of the values enshrined in EU treaties and institutions. The solutions to these tensions have been slow to come. As the Deputy Prime Minister for European Affairs of the Czech Republic put it, the EU was still "digesting the last enlargement"<sup>26</sup> five years on. Any similarities across European societies have been far outweighed by the complexity and depth of the changes that EU accession has brought to Eastern Europe. I will argue that the hiccups en route to EU membership can be quite telling about the process of normative change more generally. This dissertation will take full advantage of observing the rare experiment that has been under way in Eastern Europe and draw theoretical lessons for studying international norms in the global context as well. In addition to exploring the motivations of governments in accepting certain norms, it will focus on the role played by societies as sites of the clashes between pre-existing norms and those coming in from the outside.

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J. Katzenstein, "European Enlargement and Institutional Hypocrisy," in *The State of the European Union*, ed. Tanja A. Boerzel and Rachel A. Cichowski (Oxford: Oxford University Press, 2003).

<sup>26</sup> Alexandr Vondra, "Speech: EU Enlargement - Five Years after (March 1, 2009)," <http://www.vlada.cz/en/evropske-zalezitosti/projevy/eu-enlargement--8211%3B-5-years-after-54423/>.

The attention to societal openness to international norms should not bypass the unique patterns of state-society interaction in Eastern Europe. As a function of communist history and a tradition of dissent from official doctrine, the civil society in the region has been positioned *against* the state, rather than helping to construct it from below through a well-defined public sphere.<sup>27</sup> This legacy affects the receptivity of EU candidate societies to norms streaming in (with the endorsement of their own government elites). The inclination to contest these changes may have been suppressed in the period immediately preceding membership but as a populist backlash across Eastern Europe evidenced,<sup>28</sup> the EU was not the only actor with some enlargement “digestion” to do. Poland’s Kaczyński brothers drove to electoral victory in the first post-accession election on a platform reinstating and defending the country’s traditional values, while Slovakia’s left/extreme-right coalition successfully played up perceptions of unfair treatment by the EU and of unjustified privileging of the country’s minorities. Euroskepticism grew in the Czech Republic, and rising energy insecurity led to repeated questioning of the obligation to close down Soviet-built nuclear power plants in Lithuania, Slovakia, and Bulgaria. In all these cases, elements of discourse that were downplayed in order to demonstrate commitment to EU membership provided opportunities for domestic political actors seeking to move from opposition into government.

To discuss the coalition building in the wake of accession would amount to too great a digression from the present focus on international norms. The key implication of this trend to revisit highly sensitive and strategically suppressed issues concerns the argument about societies’ capacity to question the legitimacy of imposed norms. The close link between the enlargement

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<sup>27</sup> Michele Knodt and Barbara Finke, eds., *European Civil Society: Concepts, Actors, Strategies [Europäische Zivilgesellschaft: Konzepte, Akteure, Strategien]*, vol. 18, Bürgergesellschaft Und Demokratie (Wiesbaden: VS Verlag für Sozialwissenschaften, 2005).

<sup>28</sup> Jacques Rupnik, "From Democracy Fatigue to Populist Backlash," *Journal of Democracy* 18, no. 4 (2007).

project as a whole and the particular normative changes was initially viewed as a unique asset and the lynchpin of conditionality but it represented also the agenda's main weakness. It will be the goal here to show that this dynamic unfolded most clearly in the dense institutional context of EU accession but is by no means applicable to it alone. This applies with considerable urgency to recent efforts to cluster international norms, for instance in the realm of climate change and environmental protection, or to subsume some under others, as has been the case with the development agenda and the human rights discourse.

In the interest of conceptual clarity I will devote chapter 2 to outlining a framework that allows for a productive classification of previously undifferentiated norm cases. The resulting typology of international norms will then serve as a useful tool for establishing parallels between European and globally present norms. Before we can explore this link between the two arenas, however, a note on case comparability is in order. One might argue that there is probably a reason why norms like anti-corruption, human rights, nuclear safety, foot binding, environmental protection or ethnic minority rights do not usually figure as cases in a single research study – they are simply too different. The issue areas they concern have little in common. The degree of transnational and NGO involvement differentiates them further. Some have been part of the international discourse for almost a century, others are relatively new, and yet others have by now met their normative objectives and lost their relevance. I agree with these objections completely.

In fact, the main argument presented in this dissertation builds on these differences and expresses strong reservations about the ease with which we have been referring to many of these norms as international, *without* further distinction. Unless we examine specific attributes of each norm – the specific evolutionary stage it happens to be in and the resulting appeal that it has (or

can have) on *either* governments *or* societies – we will not be able to shed any light on the processes that underlie successful or failed attempts at international norm proliferation. The differences between individual norms therefore matter a great deal.

It would not be very parsimonious, however, to create a separate category for each of these norms and study its unique evolution over time and space. For this reason, this dissertation will attempt to develop a shared set of attributes that all norms, whether European or global, can be examined for. These attributes take into consideration the specific content of each norm but only as it is reflected in the effect that the norm has on the behavior of states on the one hand and societies on the other. As a result, we can classify multiple norms into a limited number of categories, while uncovering a pattern of differences between them. The emergent framework, in turn, allows us to anticipate main hurdles in the promotion of these norms and provide answers to why some of them succeed, while others do not, and how this can change over time.

In empirical terms, we could study the degree of norms' institutionalization, local specificity, or origin to show whether it is surprising that human rights have met with global resonance while the ban against smoking at bus stops has not. In a slight variation of this comparative exercise, it might be instructive to take a snapshot of an international norm as it was defined at an early stage of its evolution and juxtapose it with a more recent version of the norm. For example, women's rights underwent enormous and not necessarily linear transformation over the course of the twentieth century.<sup>29</sup> While the norm would likely be seen as specific to only a few countries in 1918, the picture looks very different in the present era of United Nations conferences and programs advancing women's status internationally. Ultimately, differences in content or in age, should not stand in the way of comparing various norms we refer to as

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<sup>29</sup> Krook and True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality."

international. This more critical and discerning perspective does not mix apples and oranges. Instead, it is bound to improve our understanding of the world of norms. The framework that my dissertation provides allows us to sort these seemingly irreconcilable disparities productively and open an intriguing path in the international norms research agenda.

### *What is New?*

To demonstrate that taking a second look at the processes surrounding the proliferation of international norms does not amount to a futile opening of a can of worms, this section will focus on some important issues that the new approach allows us to address. They could be subsumed under a heading of “agency in norm proliferation.” Summarizing the project’s key contributions I will comment on the dynamics that turn norm proliferation into norm promotion, the policy strategies employed in this effort, and the lessons to be learned from recent norm promotion in Europe.

First, by bringing the process, not just the outcome of norm proliferation to the forefront of our inquiry we can assess the implications of the power asymmetry between norm receiving and norm promoting countries. It may be tempting to fall into a pattern of searching for the “right” and the “wrong” side of an imaginary fence when describing the peer pressure and material incentives intended to alter the behavior of norm-violating states. However, having learned the lessons from episodes of cultural imperialism in the past, we should be cautious in establishing which norms warrant international promotion and which do not. Furthermore, the recent instances of democracy promotion in the Middle East, as well as on the periphery of post-communist Europe show that norm promoting actors must be prepared to encounter opposition.

Interpreting such resistance through the international norm lens can inform the strategies that norm-promoting actors adopt, as well as how we study their actions.

Compliance with external norms proves extremely complicated once we recognize that it involves not only governments but also their respective societies. Furthermore, diverse populations are not equally supportive of all norms. The recipients of norm-proliferation efforts need not always see the resulting reforms as positive change. For example, advocates of Muslim women's right to shed their *burqas* were surprised to find that many French or Turkish women see the veil as means of individual and cultural expression and not something they would want to reject outright.<sup>30</sup> Reasoned opposition to well-intentioned external pressure for change is not rare and establishing a shared set of criteria on which we could judge certain normative shifts as "desirable," without falling prey to paternalism, is as complicated as the spread of the norms themselves. In other words, mere presence of a norm in international discourse and practice tells us little about its meaning to concrete societies. The intensity with which norms have straddled national and cultural boundaries in recent years demands that we improve both theories and policies addressing norm-based change in international politics.

The second and related example of the need to understand the complexities of norm promotion is the extensive use of a policy instrument popular with international organizations: political conditionality. Intergovernmental and supranational institutions have become highly influential and increasingly pro-active in the past decades.<sup>31</sup> This trend has translated into growing pressure for adoption of best practices, setting of benchmarks, and propagation of

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<sup>30</sup> Caitlin Killian, "The Other Side of the Veil," *Gender and Society* 17, no. 4 (2003).

<sup>31</sup> Michael N. Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999).



unified solutions to ostensibly similar problems.<sup>32</sup> Conditionality has been defended as the perfect tool for this purpose. Material or political incentives in the form of financial assistance, market access, or exclusive membership are offered in exchange for costly economic and political reforms. However, while seemingly straightforward, these reforms usually amount to compliance with preset standards and norms of behavior, many of which are foreign to the economies and societies they target.<sup>33</sup>

The international organization most criticized for its application of conditional lending without much regard for the political and social cost of the required reforms has been the International Monetary Fund (IMF).<sup>34</sup> Advocates of the fund's mission have argued that accusations of inflexibility in IMF strategies in face of local variation are not justified, suggesting that policy preferences of the main contributors to the fund influence its approach to individual countries.<sup>35</sup> This, however, is not the type of adjustment that we have in mind when considering the normative shifts that some of these reforms require. IMF failure to modify lending arrangements to fit changing local circumstances inspired calls for separating its role as an international creditor from that of advisor for coping with globalization processes.<sup>36</sup>

Application of conditionality without considering the effect of international norms domestically

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<sup>32</sup> Judith Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions," *International Organization* 58, no. 03 (2004); Frank Schimmelfennig, "European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe," *East European Politics and Societies* 21, no. 1 (2007); Edward D. Mansfield and Jon C. Pevehouse, "Democratization and International Organizations," *International Organization* 60, no. 1 (2006); Barnett and Finnemore, "The Politics, Power, and Pathologies of International Organizations."

<sup>33</sup> The importance of striking the right balance in striving for change that is significant but not too dramatic as to prove unacceptable has been highlighted by Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*.

<sup>34</sup> This observation is not refuted by occasional praise for IMF's uncompromising position towards borrower countries Wolfgang Mayer and Alex Mourmouras, "Imf Conditionality: An Approach Based on the Theory of Special Interest Politics," *The Review of International Organizations* 3, no. 2 (2008).

<sup>35</sup> Randall W. Stone, "The Scope of Imf Conditionality," *International Organization* 62, no. 3 (2008); Kang Seonjou, "Agree to Reform? The Political Economy of Conditionality Variation in International Monetary Fund Lending, 1983-2013," *European Journal of Political Research* 46, no. 5 (2007).

<sup>36</sup> Jean-Pierre Allegret and Philippe Dulbecco, "The Institutional Failures of International Monetary Fund Conditionality," *The Review of International Organizations* 2, no. 4 (2007).

and the interaction of local and global normative structures has met with failure. Worst damage occurred in the most vulnerable places, Africa among them. In Ngaire Woods' summary of the situation

both the Fund and the [World] Bank published evaluations as to why their loans, advice, and conditionality seem to have failed on the continent... The advice they offered to governments was not always right. Politics within borrowing countries and a lack of sympathetic interlocutors and propitious political institutions, made their jobs difficult.<sup>37</sup>

Templates used by the financial organizations made life easier for their risk-averse staff but resulted in poor performance of their lending and development programs and arguably hurt those they were supposed to help.

The implications of this example for the use of conditionality as a policy tool are two-fold. First, disregard for local variation in receptiveness to particular economic and political solutions threatens not only their successful application but also the credibility of the institution promoting such change. Second, failure to consider the social impact of the changes mandated by international organizations threatens the sustainability of any progress accomplished. Despite these pressing lessons, the long-term impact that conditional arrangements can have on target societies has been understudied, especially from the perspective of normative change.<sup>38</sup> This dissertation promises to provide some answers to these questions, while examining the impact of EU membership conditionality in Eastern Europe.

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<sup>37</sup> Ngaire Woods, *The Globalizers: The Imf, the World Bank, and Their Borrowers* (Ithaca: Cornell University Press, 2006), 142.

<sup>38</sup> The need to study these questions more carefully is underscored also by the observed failure of some EU sponsored programs (including the pre-accession PHARE funded initiatives) to deliver on the promises in that they were both too ambitious and did not go far enough. Will Guy and Martin Kovats, "EU-Funded Roma Programmes: Lessons from Hungary, Slovakia and the Czech Republic," (London: Minority Rights Group International, 2006).

The final key contribution of this project amounts to a better understanding of the EU accession process and an outline of mistakes to be avoided in future rounds of enlargement. The insights to be gleaned from the experience of the newest EU members do not end there, though. Juxtaposing their pre-accession situation with that of current candidate countries is no doubt productive. But a more detailed account of the post-accession effects of membership conditionality promises to shed light on the nature of political processes *inside* the European Union, not just at its doorstep. So far, little effort has been made to explain the differential impact that EU membership conditionality has had across issue areas in candidate countries. Responding to the silence on this topic, I propose a closer examination of the norms transferred to Eastern Europe. The comparative approach selected for this study examines the effects that two norms, minority rights and nuclear safety, had in Slovakia and Lithuania (adding Czech Republic to the cases with regard to the latter norm). The resulting balance between theory-building and empirical testing that guides this project promises to provide a more accurate assessment of conditionality as a policy tool wielded by the European Union, and international organizations more generally.<sup>39</sup>

The European Union represents an increasingly complex set of institutions ordering a growing array of competences and it has had a demonstrable and significant impact on domestic policies in the member states. Describing this system of governance will allow us to explore the structural basis for policy formation. Yet, the structural effects that EU's institutions have on the

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<sup>39</sup> For earlier work on the subject see Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions.", Judith Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton, NJ: Princeton University Press, 2004)., Vachudova, *Europe Undivided: Democracy, Leverage & Integration after Communism.*, Frank Schimmelfennig, Stefan Engert, and Heiko Knobel, "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey," *JCMS: Journal of Common Market Studies* 41, no. 3 (2003)., Susan Senior Nello, "Preparing for Enlargement in the European Union: The Tensions between Economic and Political Integration," *International Political Science Review / Revue internationale de science politique* 23, no. 3 (2002)., Bruszt and Stark, "Who Counts? Supranational Norms and Societal Needs.", Jacques Rupnik, "Eastern Europe: The International Context," *Journal of Democracy* 11, no. 2 (2000).

content and reach of policies applied in Europe leave plenty of room for various actors involved in this policy-making process. The theoretical portions of this dissertation will outline how the nature of the issue area that individual policies belong to shapes the specific strategies that actors active in any such space adopt. In order to systematize the discussion of this variation across issue areas, I will present a typology of norms valid in the European Union and underlying the policies the community seeks to advance.

More generally, this project seeks to show that norms do not just spread but more often than not they are actively promoted (and opposed) by various sets of actors. The resulting dynamic generates roles for governments, domestic interest groups, the non-governmental sector, as well as societies at both the grass roots and macro level. In order to map this process most accurately, I suggest that we sort through the complex interactions between these actors depending on the type of the norm in question. Because of the important role that norms play in legitimating specific policy solutions this effort reaches far beyond theoretical fine tuning and it can also have a significant impact on how we determine policy success both in the domestic realm and internationally.

## Methods and Chapter Preview

The core research task of this dissertation is to 1./ develop a typology of international norms and subsequently to 2./ test hypotheses about the variously successful spreading of these norms by studying typical cases from each category. The first task is defined by the inclusion of a societal dimension in studying international norms. The purpose of introducing this dimension is to show how norm types vary along a continuum that replaces the previous binary differentiation between norms that are international and those that are not. In other words, we can examine norms for the *degree* to which they are, or can become universally applicable. The resulting classification facilitates the study of norm effect on states on the one hand and on societies on the other, generating insights about diverse obstacles to norm proliferation at each level. In simplest terms, the causal arrows connect norm type to norm success.

Using an inductive approach to theory building, Chapter 2 is devoted to the study of human rights and anti-corruption as Weberian ideal norm types that delimit the extremes of the continuum between international norms. The former is taken to represent norms that are easily acceptable to both governments and societies, the latter exemplifies norms that are embraced only reluctantly by both. Thus, a controlled paired comparison of these two crucial cases will dominate the discussion in the following chapter.

Once the dimensions of the analytic space for studying international norms are specified, this project will continue with a more detailed study of norm examples that have encountered difficulties in the course of their reception by either target governments or societies. Turning our attention to the dense policy space present in the European Union, the empirical chapters will focus on placing minority rights and nuclear safety in the proposed typology on norms, as well as

track their entry into candidate countries during EU's Eastern enlargement. Each of the two norms is associated with one cell in the proposed typology – they vary on key characteristics that determine their classification in the framework. As the classificatory chapter preceding the dual empirical study will show, minority rights can be expected to encounter most difficulty at the societal level, while nuclear safety should present the greatest challenge to economically and state-security conscious governments.

These divergent sets of hypotheses will be tested in the two empirical chapters that draw heavily on field research conducted in Eastern Europe and Brussels between summer 2008 and spring 2009. The variation in the focus of the chapters, one on societal processing of a norm (chapter 4 studying minority rights) and one on the governmental reactions to normative change (chapter 6 on nuclear safety), is also reflected in the methods used to study each norm.

In the case of minority rights, the key variable of interest is societal discourse on this topic. Unfortunately, public opinion survey data provides only a partial answer to this question. Similarly, qualitative analysis of press coverage of the minority rights debate need not fully capture the distribution and unique links between individual opinion stances. Therefore, I decided on a methodological approach that can be used in combination with these usual research strategies, while providing some key additional insights. I developed a Q-methodology study containing statements about minority rights, extracted from press coverage, public documents and key speeches by public officials. The main objective is to uncover groups of statements that tend to cluster together, representing the discursive positions that define a society's attitude towards minorities. Unique to each society, the results provided by this methodology can nevertheless be compared across countries, to establish the degree of similarity between the local minority rights discourse and that streaming from Brussels. My study compares the Lithuanian

experience of limited tensions between minority and majority populations, and Slovakia's struggle with minority integration throughout the country's recent history. The factor analytic approach complemented by findings from in-depth field interviews provides a well-rounded picture of the reception minority rights standards received in Eastern Europe. At the same time, and without compromising on statistical rigor, it maintains the focus on social processing of the norm.

On the opposite side of the spectrum, nuclear safety features as an example of a norm that broader publics often know little about but generally endorse, especially against the background of the Chernobyl nuclear accident that lingers in Eastern European memory and more recent events still unfolding in Japan. Governments, on the other hand face serious constraints, most notably those related to energy security in Russia's immediate neighborhood. In addition, they face the pressure international agreements to curb carbon emissions and EU-wide commitments to abide by these rules. Finally, governments are also subject to lobbying by domestic energy-producing firms demanding a favorable regulatory environment. As a result, their openness to raising safety standards and closing down nuclear plants often lags behind that of the general public. To test the hypotheses about governmental behavior regarding the adoption of the nuclear safety norm, I will focus on studying official documents from the period surrounding EU accession. Using computer assisted text analysis to detect variation in emphasis that the EU and individual member states use when justifying their decisions on nuclear safety issues can provide us with answers to questions about the spread of this type of norms. The picture will be made more complete by combining these findings with interview responses from key policy makers in the Czech Republic, Lithuania and Slovakia, as well as EU officials overseeing nuclear power plant decommissioning on behalf of the European Commission. I obtained these during the

country visits in 2008-09. The three cases were selected based on their nuclear plant decommissioning history that, between the three of them, covers the full range of variation on the subject.

The methodological tools employed in each portion of this dissertation correspond with its theoretical objectives and mirror the empirical realities that surround the international promotion of norms. I hope to show that studying the societal dimension of this process is both valid and necessary, and that innovative methods can help us address this issue comprehensively. At the same time, acknowledging the role played by governments in promoting and facilitating the adoption of norms is essential for the completeness of the final account. The methodological choices in this dissertation reflect that fact.

This chapter has introduced the case for disaggregating the effect that international norms have on states by differentiating between the motivations of governments and societies. Both these actors play an important role in determining the success of a norm. Chapter 2 will be devoted to defining both sides of the norm-proliferation process further. Focusing on the questions raised in this introduction the next chapter will open by describing the presence of norms in the global arena and linking these observations to the core question addressed by this project: why some (seemingly) international norms spread more easily than others. In chapter 3, I will develop the framework by further specifying the individual norm types and matching them with their empirical referents, minority rights and nuclear safety. Subsequently, Chapters 4 and 6 will be devoted to an empirical exploration of the dynamics surrounding the entry of the EU-endorsed version of the two norms to Eastern Europe. The main objective of the chapters focusing on minority rights and nuclear safety is to uncover the sources of the reluctance with which the two norms were received. Chapter 5 uses the findings on the minority rights to further



analyze in detail the effect of EU's institutional structures on policy development on the one hand, and the strategies that norm promoters choose in advocating the desired change of policy on the other hand. In a similar focus on norm-evolution dynamics, chapter 7 will highlight the effect of security crises on norm penetration and redefinition by governments, but also societies. Together, chapter 5 and chapter 7 are intended to uncover the conditions that trigger norm evolution, or, in terms of the present typology, their movement between cells along the two key dimensions. The conclusion will consider questions of power in shaping apparent universality of some norms and its impact on possible imbalances in norm demand and supply.

## CHAPTER 2: NOT ALL NORMS ARE UNIVERSAL – A TYPOLOGY OF INTERNATIONAL NORMS

Success is not always easy to determine. Yet, even in the fluid environment surrounding international norms we know we found a clear indicator of triumph, when a norm takes the shape of a dominant frame that can subsume other norms. In recent years, the human rights norm has reached this status with its growing role in justifying the battle against underdevelopment in world's poorest regions.<sup>40</sup> Human-rights became a guiding principle in shaping the development agenda, which by now encompasses a wide range of priorities, and among them the battle against corruption. The priorities enshrined by Millennium Development Goals (MDG) represent the most prominent example of drawing deliberate links between human rights and anti-corruption norms. In this context, UN Secretary General Ban Ki-Moon recently cited corruption as “an obstacle to the achievement of development and human rights goals.”<sup>41</sup> The emerging consensus in the development community is that human rights discourse offers “a powerful resistance to violation of various rights and the problem of corruption can be addressed by framing it [as] a human rights violation.”<sup>42</sup> This chapter will be devoted to studying the norm hierarchy that is implicit in the framing of anti-corruption efforts as a part of the human rights agenda. I will focus on uncovering the reasons behind the variation between the two norms' respective success to develop a revised theory of international norms.

The Universal Declaration of Human Rights was approved with 48 votes to none by the UN general assembly in 1948. This document now belongs to customary international law, and it

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<sup>40</sup> "Human Rights in Development," <http://www.unhchr.ch/development/>.

<sup>41</sup> "Corruption Impedes Development and Human Rights, Ban Says on International Day," UN News Centre, <http://www.un.org/apps/news/story.asp?NewsID=29229&Cr=Financial+Crisis&Cr1>.

<sup>42</sup> C. Raj Kumar cited in Thusitha Pilapitiya, "The Impact of Corruption on the Human Rights Base Approach to Development," (Oslo: United Nations Development Program, Oslo Governance Centre, 2004), 10. In an even more explicit statement of the position the 11<sup>th</sup> Anti-Corruption Conference that took place in 2003 in Seoul called for designating large-scale corruption a crime against humanity, as for many around the world it falls into the same category as torture, genocide and other crimes against humanity that rob humans of human dignity.

was followed by a set of covenants that embedded its message in international legal practice and gradually expanded the human rights agenda.<sup>43</sup> In 1993, 171 states approved the action programme from the World Human Rights Conference in Vienna and so reaffirmed their commitment to the Declaration.<sup>44</sup> As the human rights regime grew in strength, there was also a rise in the moral awareness among the global public on this issue<sup>45</sup> and the norm, while often violated, has become firmly established internationally.<sup>46</sup>

In the case of the anti-corruption norm, by contrast, progress has been much more difficult to ascertain and even international conventions specifying what constitutes corrupt behavior are not unanimous. The main existing legal instruments designed to combat corruption at the global level were developed under the auspices of the OECD<sup>47</sup> and the United Nations.<sup>48</sup> The two differ in their specificity in defining the phenomenon of corruption. This difference is largely underpinned by the diversity among their respective member states and the resulting likelihood of them sharing the views about what actions should be classified as corrupt. The United Nations Convention Against Corruption (UNCAC), wider in its geographical coverage,

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<sup>43</sup> International Convention on the Elimination of All forms of Racial Discrimination (1965), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social, and Cultural Rights (1966), Convention Against Torture (1984).

<sup>44</sup> "Vienna Declaration and Programme of Action," United Nations General Assembly.

<sup>45</sup> Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 2.

<sup>46</sup> Norms have multiple functions that are all significant for a research program using them as explanatory variables, most importantly because these functions assure the validity of a norm despite its violation. Friedrich Kratochwil, "The Force of Prescriptions," *International Organization* 38, no. 4 (1984): 686.

<sup>47</sup> *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 1997. It obliges the parties to "take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." (Article 1)

<sup>48</sup> *United Nations Convention Against Corruption*, 2003. Under the convention, corruption is understood as "The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; [and] solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties." (Article 15)

entered into force in 2005 upon ratification by 30 member states. However, only 140 members of the United Nations signed the convention and the ratification record is lagging further behind the signatures, with only 111 states having done so as of May 2009. Moreover, a number of these countries filed reservations exempting them from the legal obligations and constraints following from the Convention or its parts. The difference in success between human rights and anti-corruption, I will argue, derives from varying acceptability of the two norms worldwide.<sup>49</sup> More importantly, I will offer the analytical vocabulary needed to describe such variation.

This study uses human rights and anti-corruption as cases possessing characteristics that can help us uncover the effect of specific norm attributes on the ease with which a given norm spreads internationally.<sup>50</sup> Following the convention of employing different cases to develop a theory, and yet other ones to test it,<sup>51</sup> this chapter will refer to the *global* human rights and anti-corruption norms. It would be difficult to argue that human rights or anti-corruption norms as applied internationally are completely unrelated to their European versions. However, the density of policy contestation and the reasons employed in justifying the norm (or even the extent to which this is necessary), clearly distinguish the two arenas. In the international context, which I use to develop the present theory, the norms exist in a “thinner” version and tracing their proliferation amounts to examining the “most difficult” scenario.<sup>52</sup>

There are numerous characteristics that establish the comparability of human rights and anti-corruption: their extensive and continuously growing international presence, the richness of

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<sup>49</sup> At the same time, the acceptability is not identical with “on-the-ground” performance and it is this tension that leaves room for strategic action in norm promotion, which will be explored in the later chapters.

<sup>50</sup> I will treat the human rights and anti-corruption norms as heuristic cases. Harry Eckstein, “Case Study and Theory in Political Science,” in *Handbook of Political Science*, ed. Fred I. Greenstein and Nelson W. Polsby (Reading, Mass.: Addison-Wesley Pub. Co., 1975).

<sup>51</sup> Barbara Geddes, *Paradigms and Sand Castles: Theory Building and Research Design in Comparative Politics* (Ann Arbor: University of Michigan Press, 2003), especially Chapter 3.

<sup>52</sup> Once developed, the theory based on this investigation can then undergo a more rigorous test in the denser policy environment of the European community.

the discourse surrounding these norms, NGO and governmental involvement in advocating them, or concrete measures taken to adopt or refuse them. Furthermore, documents developed under the auspices of the United Nations played an important role in introducing the two norms to the realm of international law.<sup>53</sup> Yet, precisely because human rights and anti-corruption have so much in common, the first part of this chapter will be devoted to gaining theoretical leverage by studying the variables on which the two norms *differ*. Human rights have enjoyed support from governments, as the brief survey of international conventions illustrated. The norm has also been reinforced by societies, whenever popular movements, in alliance with international actors successfully pressured political elites for change. The norm against corruption, on the other hand, has met with only lukewarm support from most governments. Moreover, societies do not seem quite prepared to eschew corrupt practices either.

This variation between the two norms can be explored productively by identifying those attributes of these norms that either promote or hinder their proliferation. Therefore, this chapter will describe human rights and anti-corruption as approximating ideal types, each characterizing a distinct norm category. I propose that we divide international norms into *universal* and what I will refer to as *particular* norms. Particular norms originate in individual societies and are merely “passing through” the international realm, aiming to spark change in other societies. Upon entering the new contexts they acquire a unique meaning.<sup>54</sup> The ability to successfully promote these norms can be seen as a credible measure of power in international politics – the power to mold the international environment to one’s image. Yet, whether the original promoters of these norms are governments, international organizations or NGOs, these context-specific

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<sup>53</sup> These treaty instruments have also formed the foundation from which further efforts to promote the norms could be launched.

<sup>54</sup> This relates to the demand for separating the effect that norms have on governments, as the formal actors in the international realm, and individual societies, as carriers of the norms’ legitimacy and sustained validity.

norms are likely to encounter pre-existing local conventions that can weaken or directly oppose their adoption. If a norm cannot subsume these norms and its redefinition is necessary, we are dealing with a *particular* international norm.

Sean Chabot offers one example of such an attempted norm transfer in his revision of the received knowledge about international norm diffusion. He describes the efforts by civil rights activists in the United States between the 1940s and 1960s to transplant Gandhi's model of non-violent mass-scale direct action to the American context. The new norm of civil protest enshrined "a code of discipline, organizational guidelines, and practical steps"<sup>55</sup> but its introduction to the United States suffered from "hyper-difference" between the needs of the target society and the norm's specific origin within the confines of Indian culture.<sup>56</sup> The norm had to be stripped of its unique links to the Indian socio-economic divides that it was originally addressing before it could become transferable as a remedy to racial inequality in the United States. Once this occurred, the norm generated new meanings and its adoption anchored it in the new local context specific to that country. Chabot calls this process norm relocation. Within the present framework, however, the dynamic points to a lack of a broad overlap between the (unrevised) norm's effects in diverse societies. It is this overlap that would be necessary for us to call the norm truly international at the time of adoption. Thus, the Gandhian repertoire represents an example of a *particular* norm. This norm type delimits one end of the dimension for studying international norms introduced by this project.

I refer to the second norm type, occupying the opposite side of the continuum, as *universal*. This is the category with which most scholars tend to equate all "international norms."

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<sup>55</sup> Sean Chabot, "Transnational Diffusion and the African-American Reinvention of the Gandhian Repertoire," in *Globalization and Resistance: Transnational Dimensions of Social Movements*, ed. Jackie Smith and Hank Johnston (Oxford: Rowman and Littlefield Publishers, Inc., 2002), 101.

<sup>56</sup> *Ibid.*, 103.

These norms are relatively entrenched outside of specific domestic contexts – they do not characterize the views or policies of just one state or region. Admittedly, universal norms spread alongside particular ones. Sometimes they are used as framing tools for improving the adoption chances of their more context-specific counterparts, as in the match up of human rights and anti-corruption. It is also conceivable that particular norms become universal over time, which is likely to be the outcome of deliberate actions on the part of norm promoters.<sup>57</sup> Acknowledging the range of variation that spreads from particular to universal norms is not only empirically accurate but also theoretically fruitful.

The primary benefit of drawing this distinction is that it allows us to focus not only on the effect that each norm has had on states, but also on the process of normative exchange between and across societies. The mistake of most previous norm scholarship has been to treat all international norms *as if* they were universal, or close to achieving this status, without further scrutiny. Analyzing international norms more carefully and paying specific attention to the *particular* norms, can answer some important questions, including why some norms travel more easily between some societies than between others.<sup>58</sup> In order to accomplish this task, I adopt the method of process tracing as laid out by George and Bennett, with one important qualification in mind. While still treating a case as “an instance in a class of events,”<sup>59</sup> the present study looks for cases among individual norms, not historical episodes.<sup>60</sup> The evolution of an international norm,

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<sup>57</sup> I will explore this aspect of the process in the dissertation’s later chapters.

<sup>58</sup> Following the principles of generalization-oriented process tracing, I will attempt to extrapolate explanations of the norm cases into generalizations about the effect of norm origin, content, and scope on the likelihood of successful proliferation of those norms internationally. Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA and London: MIT Press, 2004), 211. The main objective of the paired comparison of human rights and anti-corruption that follows is to explore their characteristics as those of two highly contrasting cases and provide a more detailed account of norm proliferation.

<sup>59</sup> *Ibid.*, 17.

<sup>60</sup> As a result, the process to be uncovered is not necessarily one of chronological unfolding of events, the logical succession of which can inform our inferences about the causes of an outcome.

and even more so the conditions surrounding its (non)acceptance by individual governments and societies, represent the core subject of inquiry here.

### **Telling Particular and Universal Norms Apart**

Asking carefully formulated questions about the possible sources of the divergence between human rights and anti-corruption can lead to a better understanding of the complexities of the norm proliferation process and generate empirically testable hypotheses. More importantly, this exercise will also produce a norm-neutral decision guide that can be applied to the study of norms other than human rights and anti-corruption. The benefit of reproducibility of inquiry that such a set of criteria for identifying a norm as particular or universal enables is evident. I have identified five such criteria: the foundations of a norm, the context surrounding its proliferation, its degree of institutionalization, the role of material realities in getting the norm to stick, and finally the strategies employed by actors involved in advancing the principles enshrined by the norm. These norm attributes are related and inform one another but they can be used as separate indicators in the proposed classification

#### *The Foundations of a Norm*

In looking for factors that can help us classify a norm as particular or universal, we must first answer the question about the origin and evolution of norms. How easily will states be able to implement internationally “endorsed” policies depends on the degree of corresponding support for these in the underlying domestic discourse. A norm can be seen as imposed when its introduction to a society is the result of international pressure, in the absence of home-grown



demands for such a norm. In the case of non-imposition, a society participates in the creation of the norm, rather than merely receiving it, and so endows it with legitimacy. Various actions can qualify as participation in the norm creation process and they can involve both state and non-state actors. However, the main effect is that the domestic discourse concerning the norm 1) translates (more or less directly) into the final version of the norm, and 2) evolves along with the norm. Should this process fail, the norm as an imposed product of other collectivities' deliberations will be reinterpreted by the norm-receiving society, if not outright rejected. This can alter the content and meaning of the initial norm to more closely resemble / fit into the society's domestic discursive context.<sup>61</sup> Thus, the empirically observable question to be asked in determining the origin of a given norm is whether we can identify a single state or a group of states as the authors and main promoters of the norm. Does the foundation on which the norm rests have roots in more than one society?

Human rights meet the strictest criteria for worldwide acceptability, if not acceptance, leaving little room for culture-specific "explanation"<sup>62</sup> by defenders of practices such as torture, foot binding, or genital cutting. As many have acknowledged, the origin of human rights in the West is a historical fact.<sup>63</sup> The applicability of these rights, however, is independent of their geographic birthplace<sup>64</sup> and their international relevance reaches well beyond its initial boundaries. Put simply, we should not ask where the norm came from but whether

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<sup>61</sup> The main result of this "processing" of the norm at the domestic level is the generation of a transformed (however slightly) version of the norm, which is in turn likely to restart the cycle of deliberation in other societies. Importantly for the subsequent discussion of particular norms, to the extent that the rules are applied and reevaluated by individual societies who live by them, they are in a constant state of flux and should not be understood as more than an approximation of specific norms valid, questioned, and reconstituted at the domestic level.

<sup>62</sup> William J. Talbott, *Which Rights Should Be Universal?* (New York: Oxford Univ. Press, 2005).

<sup>63</sup> Joanne R. Bauer and Daniel A. Bell, *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1996); Xiaorong Li, "'Asian Values' and the Universality of Human Rights," in *Philosophical Dimensions of Public Policy*, ed. Verna V. Gehring and William A. Galston (Edison, NJ: Transaction Publishers, 2003).

<sup>64</sup> Jack Donnelly, "Human Rights and Asian Values: A Defense of 'Western' Universalism," in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (Cambridge: Cambridge University Press, 1996).

internationally established human rights make sense elsewhere than in the West.<sup>65</sup> As a result, the relevant norm origin is that of the standards on which the validity of a norm is judged. Even if the trajectories taken to reach these standards may vary across cultures, they nevertheless produce a relatively coherent norm, whose explanation and justification allows for variation in cultural practices, but follows roughly the same line separating the right from the wrong. Without reverting to essentialist views of human nature, we can see our *human* experience as broadly comparable, whether one was born in Iran or Denmark. In recognition of this principle the first article of the Universal Declaration of Human Rights begins by stating that “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Confirming the straightforwardness of its message, the Declaration’s third article continues, “[e]veryone has the right to life, liberty and security of person.”<sup>66</sup>

The foundations of a norm that establish it as universal do not come without controversy. The greatest recent challenge to the universality of human rights came precisely down the “norm origin” path, in the form of the “Asian values” debate.<sup>67</sup> This challenge presented a different perspective of rights that human beings were entitled to. The emphasis on a collective, rather than individual formulation of these rights in Asian societies, and the focus on duties, rather than entitlements pushed some civil and political rights to the background and privileged social and economic development. However, the divide between the “Western” and “Asian” approaches to human right rights has since been uncovered as ambivalent, contingent, and resting on false

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<sup>65</sup> Ibid., 69.

<sup>66</sup> "Universal Declaration of Human Rights," <http://www.un.org/en/documents/udhr/>.

<sup>67</sup> The argument that the "Western concepts" of democracy and human rights will not work in Asia was introduced, most prominently, by Singapore’s prime minister Lee Kuan Yew and immediately generated controversy Fareed Zakaria, "Culture Is Destiny - a Conversation with Lee Kuan Yew," *Foreign Affairs* 73, no. 2 (1994); Dae Jung Kim, "Is Culture Destiny?," *Foreign Affairs* 73, no. 6 (1994).

dichotomies.<sup>68</sup> Responding by taking the position of “weak cultural relativism,” authors that defend the universality of human rights show how the norm’s international recognition still leaves plenty of room for living out traditional values.<sup>69</sup> In simplest terms, the universality of human rights claims does not require uniformity in their fulfillment.<sup>70</sup> As William Talbott skillfully illustrated using the example of prescriptions existing in most societies for providing care to the elderly, “there are various equally good systems of norms governing [such] care.”<sup>71</sup>

Along with this room for diversity, widespread applicability of human rights does not guarantee the norm’s success in all societies, nor does it preclude its evolution. Instead, the resistance to Western domination of the human rights agenda has ultimately led to an expansion of the human rights category and elicited calls for a prioritization of these rights. The guiding principle here was not the canon of Western liberalism but the real impact that their violation has on the lives of oppressed groups (and individuals).<sup>72</sup> The similarity of our *human* experience affects the likelihood with which we will be able to perceive the human rights and related norms as legitimate. This makes a unique source of support for the norm nearly impossible to identify and is sufficient to classify human rights as a universal norm under the present framework.

Human rights differ from anti-corruption in the duration of their presence in international law and discourse and this has arguably affected the range of opportunities for diverse societies

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<sup>68</sup> Amartya Sen, “Human Rights and Economic Achievements,” in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (Cambridge: Cambridge University Press, 1996).

<sup>69</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003); Bauer and Bell, *The East Asian Challenge for Human Rights*. William Talbott refers to his position as epistemically modest defense of human rights deriving from a cultural relativism about *internal* norms. Talbott, *Which Rights Should Be Universal?*, 110-12.

<sup>70</sup> Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002), 46.

<sup>71</sup> Talbott, *Which Rights Should Be Universal?*, 30.

<sup>72</sup> Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1996).

to internalize the norm and contribute to its development.<sup>73</sup> Yet, the temporal dimension aside, the ease with which we can identify the intellectual, economic and social origin of anti-corruption is much greater than in the case of human rights. The “international” norm banning corrupt practices is deeply rooted in the liberal economic principles espoused by advanced industrial countries. Consequently, it is not surprising that these countries were able to reach a more comprehensive consensus under the OECD institutional umbrella. This concentrated foundation for the norm also serves as a source of leverage by the developed countries over the recipients of their aid, whenever the suspicion arises about the economy-stifling effect of corrupt exchanges. The objectives of curbing corruption, therefore, can be acceptable to a society only to the extent that the liberal principles of open market economy and the accompanying institutions are so.<sup>74</sup> The difficulties that government representatives have had in agreeing on a single definition of corruption for the United Nation Convention Against Corruption (UNCAC) hints at a society-specific understanding of the phenomenon. With respect to its origin, the anti-corruption norm therefore has to be described as particular. Demonstrably, the distinction between norms based on the circumstances and actors surrounding their inception is linked to the likelihood of convergence on a coherent international version of the norm. Thus, norm origin understood as the justifications available for its legitimacy, should be included among the factors determining the success or failure of a norm’s proliferation.

### *Context Surrounding a Norm Violation*

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<sup>73</sup> The present approach does not deny the role of norm age in facilitating their promotion. But this variable need not unnecessarily obstruct norm comparisons. By focusing on the attributes that reflect norm age without necessarily being identical with this variable we can study their independent influence on norm success.

<sup>74</sup> Dangerously, however, Bukovansky is correct to warn us that “pitching the anti-corruption discourse as a diagnosis for underdevelopment also absolves those living in liberal capitalist states from scrutinizing their own politics in terms of a discourse of corruption.” Bukovansky, “The Hollowness of Anti-Corruption Discourse.”

The particular/universal distinction centers around the content of norms we know as international. This project introduces the societal dimension in addition to the usual focus on official governmental policies because it promises to capture the dynamics that surround the living-out of the norm in everyday behavior of individuals affected by it. In this context, the moment of a norm's violation becomes highly important for differentiating between norms. For a norm to be classified as universal, its violation has to be recognizable as one by both parties involved, i.e. the victim and the violator. For instance, bribing a police officer need not be an unacceptable transgression in all parts of the world. In addition, the power asymmetry between the participants in that exchange, conditioned by collective expectations about such situations, affects the victim's and the violator's willingness to follow through with the "corrupt" transaction. The problem for norm applicability arises when participants in that exchange do not see it as deviant or undesirable in any way. This has negative consequences for any measures aimed at eliminating corruption from political and economic life. The expected behavior is determined by the particular social and perhaps economic context in which the two actors operate and need not be viewed as transgressing against a norm by the perpetrator, and not even by the victim.

The anti-corruption norm as embodied by international agreements on the subject, redefines the relationship between the victim and the violator – without the norm, in fact, the two sides of the exchange could not be so labeled. Where the norm had not been formally introduced, its violators cannot be held accountable. In other words, for anti-corruption to be effective there has to be a consensus on what constitutes *corruption*. However, as Bukovansky points out, distinguishing between a gift and a bribe requires thick cultural knowledge of the particular

society in question.<sup>75</sup> Moreover, certain pre-defined principles regarding the desirability of equal access to the political process and non-discrimination in interactions with state institutions are necessary for specifying any behavior as a norm violation. At this point, the authenticity of the underlying norms presupposed under the heading of liberal rationalism becomes crucial. If such principles do not exist in a society, or are not perceived as legitimate, the reach of the anti-corruption norm, which depends on them for validity, is minimal.

This situation is very different from, for example, the expectation that all drivers remain on the correct side of the road so as not to endanger others. Once we recognize that all participants in road traffic are equally vulnerable to injury, a person violating this rule can conceivably be aware of the danger she is posing to others.<sup>76</sup> The driver's seeing her actions as a norm violation is not dependent on the introduction of an isolated set of values and principles to her. The wrong-doing stems from the fact that both she and her potential victims are human. Protection from bodily harm could thus be classified as a principle comprehensible to all, regardless of the social milieu they happen to live in.

In order to use this criterion to empirically distinguish between particular and universal norms we have to ask whether a norm, upon entering a society, introduces accountability where it had not existed before. By disregarding human rights, violators may be inflicting harm on their victims, but their actions cannot be justified even in the eyes of the perpetrator, once (even if just theoretically) their shared identity as humans is recognized.<sup>77</sup> In other words, the violator, being

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<sup>75</sup> Ibid. Also see Bryan W. Husted, "Wealth, Culture, and Corruption," *Journal of International Business Studies* 30, no. 2 (1999); Avner Offer, "Between the Gift and the Market: The Economy of Regard," *The Economic History Review, New Series* 50, no. 3 (1996).

<sup>76</sup> This analogy is commonly used to illustrate the fine lines separating the different reasons for *following* a norm – routine, rule-driven behavior and identity-based actions. The present use of the metaphor, by contrast, focuses on the moment of *norm violation*, which takes the edge off the above differentiation. Regardless of what the original motivation for following a norm might be, or perhaps because there is a *multitude* of reasons for compliance, the violation can easily be understood as such.

<sup>77</sup> For a similar argument see Talbott, *Which Rights Should Be Universal?*

equally susceptible to pain or humiliation, can feasibly understand her actions as wrong, without having been introduced to a human rights covenant. In sum, existing patterns of social interaction do not necessarily change once we formally introduce human rights as a social and legal norm. This kind of shift, by contrast, is apparent in the case of (anti-)corruption.

This context-centered criterion for identifying particular and universal norms is closely linked to the specificity of norm origin discussed above. The two are not identical, however, as the ability to comprehend certain actions as a norm violation derives directly from the content of the norm. It highlights the fact that the specific function that a norm was designed to fulfill in one context may not transfer easily to another. In sum, whenever a norm introduces accountability where it did not previously exist, as the anti-corruption norm often does, it falls into the particular category.

### *Institutionalization of a Norm*

The third criterion for assessing the particular/universal nature of a norm centers on the degree to which this norm depends on the new institutional structures designed to elicit compliance. The main question is whether the norm has enjoyed a sufficient degree of legitimacy prior to *institutional* changes implementing its validity, or if the institutions were intended to *create* such legitimacy, and are thus vulnerable as targets of the discursive questioning directed at the “new” norm. Do the justifications for following the norm aim to draw a line behind the pre-adoption past? What is the risk that the receiving society will reject the internally imposed framing of the norm in question?<sup>78</sup>

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<sup>78</sup> Krook and True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," 8.

The case of human rights proliferation following the Helsinki conference in 1975 can serve as a suitable example of norm legitimacy being succeeded by institution building, in order to constrain both state and non-state actors into compliance with a widely established norm. Daniel Thomas traced the process of shaming the Soviet-bloc governments into living up to the promises made at Helsinki.<sup>79</sup> The governments which had originally signed on to the human rights agenda for instrumental reasons were trapped in their rhetoric and pressured by peer states and domestic activists into compliance. Their failure to comply put the legitimacy of the entire Soviet regime into question, but more importantly for the present project, the affected societies considered themselves authors of the norm that was about to enter their lives as a desirable constraint directed at their respective governments. This was in no small part the result of the underground dissident movement, which also produced legitimate leaders when the time was ripe for a changeover. Therefore, following the fall of authoritarian regimes in Eastern Europe, there were few obstacles to the implementation of the human rights agenda, as the legitimating momentum in support of the norm was already present.<sup>80</sup>

The anti-corruption norm presents us, again, with a different story. Miller, Grødeland and Koshechkina's survey of four Eastern European countries (Czech Republic, Bulgaria, Slovakia, and Ukraine) represents a precious collection of data on corruption, perceptions of the phenomenon, and experiences of interaction between citizens and "street-level" officials. Their data on the citizen-perceived causes of bribery in the Slovak case, for instance, shows that 30 percent believe the main reason is that "officials are greedy," only 19 percent think it is because the government does not pay the officials enough, and 50 percent see the main cause in people's

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<sup>79</sup> Daniel Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton: Princeton University Press, 2001). Also see his chapter in Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*.

<sup>80</sup> Keck and Sikkink report on a similar unfolding of events in Mexico Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, 111.



desperate desire to “buy favors.”<sup>81</sup> Ironically, market forces are allowed to operate at the expense of transparency and access to state institutions or services nominally free, and unless a credible institution is introduced to deal with this situation, the societal beliefs about corruption are unlikely to change. Studies of corruption as a collective behavior support this observation.<sup>82</sup> Still, the institutional environment is closely linked to citizen preparedness to comply with requests for bribes, as 61 percent believe that officials are more willing to take or request gifts because people do not know where to make a complaint.<sup>83</sup> In an effort to comply with the anti-corruption norm, a government should thus alter the institutions that were previously conducive to intransparent transactions. One thing remains clear – in the case of anti-corruption efforts, the norm follows the institutions enforcing it, rather than vice versa.

Even if such measures succeed, the more difficult part of the reform effort would be changing the understanding of many such exchanges as non-corrupt. According to a World Bank/USAID study of the reasons for offering a side payment in healthcare in Slovakia, these include a desire to improve the quality of services (35%), to express thankful appreciation (33%), to be favored or speed things up (11%), or merely to comply because “it is a habit, it is common” (10%).<sup>84</sup> As long as these are the main motivations for corruption, reflective of a “gift-giving culture,”<sup>85</sup> the new institutions can be seen as going against the tide of widespread attitudes towards corruption. Especially the declared desire to express thankfulness and comply with existing local practices in such situations is reflective of existing social conventions that

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<sup>81</sup> William Miller, Ase B. Grodeland, and Tatyana Koshechkina, *A Culture of Corruption? Coping with Government in Post-Communist Europe* (Budapest: Central European University Press, 2001), 75.

<sup>82</sup> Ting Gong, “Dangerous Collusion: Next Term Corruption as a Collective Venture in Contemporary China,” *Communist and Post-Communist Studies* 35, no. 1 (2002). Also see Mark Granovetter, “Threshold Models of Collective Behavior,” *American Journal of Sociology* 83, no. 6 (1978).

<sup>83</sup> Miller, Grodeland, and Koshechkina, *A Culture of Corruption? Coping with Government in Post-Communist Europe*, 76.

<sup>84</sup> “Corruption in Slovakia: Results of Diagnostic Surveys,” (World Bank and USAID 2000).

<sup>85</sup> A term coined by Miller, Grodeland, and Koshechkina, *A Culture of Corruption? Coping with Government in Post-Communist Europe*.

erode the applicability of the newly introduced norm against corruption. Not only does this data illustrate that the Slovak society is not prepared to draw a line behind a corruption-filled past, it is not clear what the defining features of that past would be.

By contrast, the desire to draw a decisive line behind the communist past in Eastern Europe was most pronounced when it came to the oppressive nature of the old regime and its human rights deficit. It is not a coincidence that the moral and eventually also political leaders of the “Velvet Revolution” came from among dissidents, who organized themselves in support of the Helsinki human rights promise. The desirability of the human rights guarantees materialized in the creation of the domestic and international institutions charged with monitoring the upholding of this norm. Questioning the legitimacy of these institutions would amount to a return to a past that had been rejected, which provides an additional reason for classifying the human rights norm as universal.

### *Relevance of Local Material Realities*

Next, to classify a norm as particular or universal we must also examine the main sources of opposition that it encounters in the course of attempted proliferation. What are the policy steps necessary for the normative change to occur? Is the norm a technical rule or is it a social practice that is deeply rooted in material circumstances determining the logic behind it? Some clues on this point have already been offered in the sections dealing with the origin and institutionalization of norms, but we must still ask: why would a state’s adoption of a norm pose legitimacy / implementation problems domestically? To answer this question, we have to look past the governments as single-voice representatives at the international level.

Although the state has a role to play in setting the terms of the identity discourse, its actions cannot be too far removed from the society's existing collective identity.<sup>86</sup> These tensions are best illustrated by examples of clashes on food safety and sanitary norms briefly mentioned in the introductory chapter. If the EU were to regulate production of traditionally unpasteurized cheese in Poland or Romania, Slovak sour cabbage, or Hungarian sausages it would enter the territory of pragmatic social norms that had developed from once-relevant concerns about nutrition that were most salient in pre-supermarket days but nevertheless linger in societal consciousness to this day. Abandoning traditional staples in the interest of seemingly arbitrary standards would require a thorough reconsideration of affected societies' diet – a change on the most fundamental “material” level. Although often less dramatic, many norms require that a deeply rooted practice be replaced by new patterns of behavior. The deeper the roots reach, the more difficult it will be to replace a pre-existing norm with a transplant.

In addition, the material reality and its interpretations should be seen as a range of possibility, which can be expanded (though not indefinitely), if the correct argument is made. The story, then, is one of “tolerable divergence” between the material world and the socially conditioned interpretations of it.<sup>87</sup> As Wade Jacoby puts it in connection to his discussion of policy emulation by elites in EU and NATO candidate countries, the key balance lies between promoting institutions that are “foreign” enough to promote real change and yet not so foreign as

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<sup>86</sup> The process of social interaction also becomes relevant for overcoming existing practices that are deeply rooted in collectively held expectations about the behavior of others that make it possible for even seemingly fixed practices to retreat once a certain threshold has been reached. This was the case with the successful elimination of foot binding in China and is the main hope for eradicating female genital cutting in Africa. Talbott, *Which Rights Should Be Universal?*, 91-112.

<sup>87</sup> I borrow the term “tolerable divergence” from Steven P. Lee, a moral philosopher who applied this principle to capture the interaction between moral and prudential (understood in utilitarian terms) norms in institutional contexts. Steven P. Lee, *Morality, Prudence, and Nuclear Weapons*. (Cambridge: Cambridge University Press, 1993), 21. I would like to thank Professor Henry Shue for bringing this parallel to my attention.

to be unacceptable.<sup>88</sup> The degree to which the advocacy of international norms represents a malleable issue will affect the room for strategic decisions by actors involved in promoting a given norm. This aspect of international norm proliferation will be taken up in the next subsection. As far as the relevance of local realities is concerned, it is important to consider the available perceptions of a norm and whether the issue can be framed in a way that resonates with the already existing social conventions.<sup>89</sup>

Human rights approximate more closely a norm that can be accepted by target societies, once the hurdle of government cooperation is overcome. It is not coincidental that this norm and especially the element prohibiting bodily harm, dominates the agenda of internationally active advocacy networks.<sup>90</sup> Human rights norm's characteristic as a universal criterion of basic justice<sup>91</sup> elicits societal consent with its main premise. This consent, sometimes silent, becomes particularly apparent in situations when oppressive regimes are overthrown and the first calls for justice entail accountability for past human rights violations, as has been the case in post-communist Europe, post-apartheid South Africa and even post-genocide Rwanda.

If a norm does not coincide sufficiently with a pre-existing set of rules and identities, the claim to membership in the international society defined by that norm will remain internally unsupported and any continuation of the (illegitimate) status quo will depend on intimidation and / or blind conformity. Domestic transformation of that norm represents another alternative. This has been the case with anti-corruption, when even government cooperation does not guarantee a lower occurrence of corrupt behavior. The collective action problem that characterizes most attempts at eliminating corruption resembles the main difficulty with eradication of foot binding

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<sup>88</sup> Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*, 3.

<sup>89</sup> Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, 17.

<sup>90</sup> Ibid., 11 and 26-27.

<sup>91</sup> Pogge, *World Poverty and Human Rights*, 50.

as a practice in China, in that an individual's behavior depends on the decisions she expects others to take. One key difference, however, lies in the lack of recourse to an overarching and widely applicable principle, such as an appeal to protecting individual autonomy.<sup>92</sup> This distinguishes the corruption challenge from human rights violations in traditional / patriarchal societies. As a result, individual expectations about the behavior of others prove very hard to change. Even centrally implemented measures for combating corruption, which, ironically, often rely on decentralization of political and economic power, translate into tangible change only with difficulty.

### *Strategies Surrounding Norm Promotion*

The question of local realities varying across contexts also translates into the strategies adopted by actors, most frequently non-governmental organizations, involved in promoting any given norm internationally. If there is a detectable difference in the nature of norms we call international, we should also be able to observe a difference in approaches devised for encouraging and monitoring compliance with these. Continuing the line of argument presented in the previous section about material realities influencing the acceptability of a norm, we should expect to see norm-promoters responding to any potential reluctance on the part of norm-recipients by altering their approaches accordingly. On this measure, the contrast between human rights and anti-corruption is particularly stark.

The decades following the establishment of basic human rights standards under the auspices of the UN have seen a growth in the activity of non-governmental organization such as Amnesty International or Human Rights Watch that have acted as a “conscience” for the human

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<sup>92</sup> Talbott, *Which Rights Should Be Universal?*, Chapter 6.

rights regime.<sup>93</sup> Amnesty International (AI) gained its prominence among defenders of human rights by focusing on the fates of individuals whose rights were being violated, which firmly linked their efforts to the political realities they sought to alter. In addition to proving strategic in gaining widespread support for their activities,<sup>94</sup> the approach also highlighted the unique nature of human rights as a norm that derives its appeal from the comprehensibility of human suffering to people around the world. Paradoxically, then, the relatively narrow focus on the stories of oppressed individuals<sup>95</sup> secured the broadest appeal of human rights advocacy. Similarly, the carefully selected cases from across world's regions precluded accusations of ideological tainting of AI work but at the same time documented the relevance of the human rights agenda across diverse contexts. Today, AI along with a few other leading human rights organizations defines what constitutes a human rights violation.<sup>96</sup>

The impact of the norm's content on proliferation efforts does not stop with steering the specific campaign approaches chosen by human rights advocacy groups. Their internal organizational structures are also telling in this regard. AI's international secretariat, not the country offices, is responsible for the majority of the organization's research and also leads their campaigning work.<sup>97</sup> A similar internal hierarchy has developed among other members of the human rights advocacy network, including for example Human Rights Watch.

This approach to managing AI's and HRW's international activities is in sharp contrast with the internal organization of the anti-corruption network led by Transparency International.<sup>98</sup>

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<sup>93</sup> Dunne and Wheeler, eds., *Human Rights in Global Politics*, 2.

<sup>94</sup> Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, 88.

<sup>95</sup> "Amnesty International History," <http://www.amnesty.org/en/who-we-are/history>.

<sup>96</sup> Ann Florini and Nihon Kokusai Kōryū Sentā, *The Third Force: The Rise of Transnational Civil Society* (Washington, DC: Carnegie Endowment, 2000), 187.

<sup>97</sup> "Amnesty International Contact Page," <http://www.amnesty.org/en/contact>.

<sup>98</sup> Although other internationally active non-governmental organizations have incorporated corruption in their activities, it has been largely treated as a somewhat marginal issue, merely accompanying the problems of poverty, inequality or environmental degradation, but not really resting at the root of these challenges. The inverse approach

TI's international secretariat in Berlin, Germany, plays an important role in global efforts to develop and improve international anti-corruption conventions, and representing the network in interaction with other institutions. It also provides some (mostly methodological) resources to the regional offices. But it is the national chapters that carry out the bulk of the research and policy work on the ground:

National chapters are the core of the TI movement. It is their work – offering local rootedness, creating synergy and dynamism for TI as a whole, and allowing innovation – that enables TI to advocate and achieve on a number of fronts.<sup>99</sup>

The organization's strategies are formulated bottom-up, reflecting the diversity of local challenges for anti-corruption.<sup>100</sup> Each national chapter considers carefully what corruption means in the local context and what the best strategies for its elimination are. Throughout the existence of this organization, the bottom-up approach has been preferred and encouraged by Transparency International. Its success illustrates the context-specific nature of corruption and by extension of the anti-corruption measures designed to combat it.

Though indirect, this last criterion for distinguishing between universal and particular norms is telling about the practical implications of this variable.<sup>101</sup> To the extent that the universal norms resonate most loudly with the world public, it would appear to be a desirable strategy to frame as universal norms that emerged in a particular context.<sup>102</sup> As Mary Kaldor put

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has been adopted by Transparency International. The TI movement targets corruption as a phenomenon that is not a side-effect of underdevelopment and poverty, but rather interrelated with these in complex ways.

<sup>99</sup> "Transparency International Strategic Framework, 2008-2010," (Transparency International, 2007), 6.

<sup>100</sup> "Transparency International - Organization," [http://www.transparency.org/about\\_us/organisation](http://www.transparency.org/about_us/organisation). Also see "Transparency International Strategic Framework, 2008-2010," 10.

<sup>101</sup> I will later pick up this theme of strategic action by actors involved in norm promotion and the degree to which they have sought to approximate a universal version of the norm, by overcoming the imperatives of local realities.

<sup>102</sup> This becomes particularly relevant in the European institutional environment where the additional level of decision making also provides a new (and carefully defined) arena for voicing normative concerns.

it, the “advantage of the human rights discourse is its globalist character and its emphasis on the individual.”<sup>103</sup> However, she questions whether projects that graft other norms onto the human rights agenda can become universalist in practice, “even if they always appear to make universalist claims.”<sup>104</sup> This is the reason why I transfer the insights learned through the global-arena comparison of human rights and anti-corruption to the European context, where the norm-promotion actors face additional incentives (and resources) for such universalizing efforts in the form of their interaction with European Union’s institutions. The final section of this chapter will provide the links necessary to make this transition to the European policy space. Table 2.1 below concludes the international-level comparison of human rights and anti-corruption and summarizes the five criteria for distinguishing between universal and particular norms. Cumulatively the indicators define the newly proposed variable of norm content.

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<sup>103</sup> Mary Kaldor, “Transnational Civil Society,” in *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), 211.

<sup>104</sup> *Ibid.*, 211.



**Table 2.1. Particular and Universal “International” Norms as Concepts**

<i>Norm type</i>	<i>Secondary level</i>	<i>Indicator level</i>	<i>Shared empirical questions</i>	<i>Indicator level</i>	<i>Secondary level</i>	<i>Norm type</i>
<b>Particular norm</b>	Norm specificity	Society/community-specific norm origin	Is the origin of the norm identifiable?	Shared experiences facilitated widespread comprehension and appeal of the norm	Norm transferability	<b>Universal norm</b>
		Collectivities concerned and victims of violation defined by the norm	Does the norm alter the patterns of interaction between individuals and re-designate the groups they belong to?	Membership in the society, which delineates the scope of the norm's effectiveness also determines norm content		
	Decentralized process of norm adoption	Legitimation follows norm adoption	Do the justifications for following the norm aim to draw a line behind the pre-adoption past?	Legitimation precedes norm adoption	Concentrated process of norm adoption	
		Local material realities matter for the processing of the norm	Is there high variation between the local approaches to the norm's implementation?	Pressure concentrating on centralized norm guarantors (e.g. governments) to enact change		
		Dispersed NGO activity, decentralized strategies for norm promotion	Are the NGOs promoting this norm well attuned to the local particularities and there is limited room for sharing their strategies?	Centralized / coordinated NGO activity		

## Combining the Two Dimensions to Classify International Norms

With the growing authority of international organizations and reach of transnational movements, new norms have appeared that governments endorse and actively promote, *in spite of* societal resistance. If we concede that most governments are accountable to domestic pressures, government-led norm promotion raises one important question. Why would elites want to pursue policies that are bound to encounter intra-state opposition? The simplest explanation is that governments prioritize foreign policy objectives in exchange for political or economic gains that benefit the country as a whole, even if they reshuffle the distribution of winners and losers internally. Compliance with reform demands from the World Bank and the IMF presented as the conditions for obtaining valuable financial or developmental aid fall into this category. Matters are not always this straightforward, however. As has been the case with Eastern European accession to NATO and the EU, societies and governments often agree on the desirability of normative change *in principle* but disagree on the means of attaining this overarching objective.

The effect of membership in an exclusive community of states is at the heart of this problem. Governments bearing the broad mandate from their constituents initiate norm-derived changes to demonstrate that they are worthy of the organization they seek to join. The more exclusive the membership, the more desirable the international status it bestows. Arguably, the adoption of specific norms and the changes that they introduce to target states tests the commitment to become an EU or NATO member. The membership in these organizations is defined, or constituted by the norms they promote. In John Ruggie's phrasing, these norms "define the set of practices that make up a particular class of consciously organized social

activity [e.g. membership] and specify what counts as that activity.”<sup>105</sup> Without the norms, there would be little meaning to NATO and EU membership. Since the norms define the identity of states, they have a constitutive effect on both candidates and members – they create them and give weight to the differences between them.

Yet, since only *states* can benefit from the status that norm compliance grants them internationally, their commitment to overseeing normative change at home does not immediately elicit appropriate behavior of individual citizens. From the latter’s perspective, the more specific normative prescriptions become, the more difficult it is to link these to the original desire for joining the EU or NATO. In the case of East European candidate countries, support for democracy, human rights, and even market reforms was widespread and corresponded well with the goals of transitioning away from their communist past. Unfortunately, vagueness with which these conditions of membership were stipulated sometimes led to surprises. En route to accession, Latvians had to revisit their citizenship policies and Slovaks had to make up with Hungarians and the Roma. To prepare for joining the common market, the tradition of small-scale farming was threatened in Poland and the primary source of electricity (a nuclear power plant) had to be shut down in Lithuania. “Returning to Europe” was suddenly proving more costly than the candidate populations had envisioned. In such instances, the compliance pull had to come from above and societies suddenly became the obstacles to normative change, rather than its enthusiastic supporters. The constitutive effect that some norms have on states therefore leaves potential disagreements between government elites and the society at grass roots level outside of the analytic reach provided by the existing theories about international norms.

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<sup>105</sup> John G. Ruggie, "What Makes the World Hang Together," *International Organization* 52, no. 4 (1998): 871. For example, if respect for human rights, upholding the principles of democracy, and commitment to collective defense define membership in NATO, no country will be allowed to join the alliance unless they have declared and demonstrated their commitment to these principles.

Regulative norms, which are commonly contrasted with the constitutive ones, are not immune to misalignment of positions taken by the governments and societies either. These norms “influence policy choices through processes of coercion, inducement, and legitimation”<sup>106</sup> and can be understood as mutually agreed-upon rules of behavior underpinned by instrumental reasoning. Paralleling the differential effect of constitutive norms on governments and societies, regulative norms also leave a stronger imprint on the cost-benefit aware government elites. Societies tend to experience these pressures mediated by domestic policy, which is shaped by government elites. These elites, in turn, come to power through some form of domestic selection process, in democracies an election. One might therefore be surprised to find any discrepancy in positions between governments and societies when it comes to regulative norms. Yet, such disagreement does exist in relation to environmental regulations, especially their well-developed EU version. These rules enjoy implicit and commonly voiced support from sizable segments of the broad public.<sup>107</sup> Simultaneously, they face resistance, or limited endorsement from governments.<sup>108</sup> On the public reaction side, the dominant argument mirrors the not-in-my-back-yard principle and a deeply anchored tradition of environmental awareness. Governments, by contrast, remain conscious of long-term economic costs of curbing greenhouse emissions or fish stock preservation measures. As a result, they are reluctant to give in to societal pressure on such matters. Nevertheless, societies play a considerable role in shaping the success of international norms and they need not always take the same positions as their governments. In addition to reflecting the empirical reality of norm proliferation more accurately, answers to questions about

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<sup>106</sup> Audie Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca, NY: Cornell University Press, 1995), 27.

<sup>107</sup> Chris Rootes, ed. *Environmental Protest in Western Europe* (Oxford: Oxford University Press, 2003); Dieter Rucht, "Lobbying or Protes? Strategies to Influence EU Environmental Policies," in *Contentious Europeans: Protest and Politics in an Emerging Polity*, ed. Douglas R. Imig and Sidney Tarrow (Lanham, MD: Rowman & Littlefield Publishers, 2001).

<sup>108</sup> Christoph Knill and Andrea Lenschow, *Implementing EU Environmental Policy: New Directions and Old Problems* (Manchester: Manchester University Press, 2000).

the degree to which norms are “international” fuel the need for separating the effect that norms have on governments and societies. The former operate as the formal actors in the international realm and the latter as carriers of the norms’ legitimacy and sustained validity. Consent at both the government and societal level is necessary for successful promotion of any norms, but neither is sufficient without the other.

Our current conceptual toolkit is inadequate for exploring this societal dimension. This omission highlights the relevance of this project’s focus on the domestic processing of international norms. Effectively, the emphasis in this chapter on the variables differentiating between particular and universal norms supplements the research exploring the “usual” constitutive/regulative continuum in studying international norms. To do this successfully, we have to keep the processes of *norm implementation* (i.e. the transposition of its constraints into policy and legislation) and *norm internalization* (i.e. their acceptance by the affected societies resulting in behavioral change of individuals and collectivities) analytically separate.

Sometimes it may be difficult to tell whether a norm spreads easily due to support from governments or from societies. If it meets with considerable success, it likely enjoys the endorsement from both. Scandinavian success in including women at all levels of political and economic life is well known. Yet, we would be hard-pressed to determine whether this outcome ensued from progressive policy measures that facilitated female inclusion in the legislature and government, or if this inclusiveness derives mainly from the receptive attitude of the Scandinavian societies. The two go hand in hand and are difficult to disentangle. By the same token, the cause of a norm’s failing performance may be obscured by the combination of a superficial government response that is unlikely to alter actor behavior considerably and indifference from the societies affected by the norm. Gender selective abortion in India or China,

for instance, constitutes a violation of the gender equality norm that is fuelled both by societal attitudes and overly lenient government approach on the matter. Despite these empirical difficulties, separating the behavior of states from that of societies can contribute to a better understanding of cases where the government and the people are *not* equally enthusiastic about the change stemming from newly adopted norms.<sup>109</sup>

Human rights and anti-corruption both contain a regulative element. However, to the extent that grave human rights violations now warrant international (military) intervention,<sup>110</sup> the norm is also constitutive of order in the international realm (complementing the state sovereignty norm, for instance). No such quality can currently be uncovered in the case of anti-corruption. The latter norm primarily represents a set of rules with intended causal effects, which enable the smooth running of the neo-liberal economic order without necessarily constituting it. However, the classification of the human rights norm as universal-constitutive and of anti-corruption as particular-regulative does not yet allow for a satisfying differentiation between the impact that these attributes have on the success of a norm. In the case of these two norms, governmental response mirrors that of societies. As a result, it is not immediately clear how much of the variation in norm success is caused by the particular-universal divide or by the constitutive-regulative difference between the two norms.

Anti-corruption and human rights norms are viewed as ideal types here in that the respective positions taken by governments and societies reinforce each other. For the majority of

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<sup>109</sup> The approach, to some extent, can be seen as incorporating two-level games of norm-proliferation into our analytical models for studying international norm (non)proliferation. Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988).

<sup>110</sup> Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003); Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005), 248; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Middlesex: Penguin, 1977), 101-8. For "intolerable" human rights violations justifying breaches of national sovereignty see Talbott, *Which Rights Should Be Universal?*, 7., citing Will Kymlicka, "The Good, the Bad, and the Intolerable: Minority Group Rights," *Dissent* 43, no. 1 (1996).

international norms, however, the waters are much muddier. Only the exploration of the remaining two cells in the typology, where the two key dimensions influence norm success in *opposite* directions, can fully uncover the relative weight of the processes at work in norm proliferation.<sup>111</sup> Reflecting this in our analytical models can contribute to a better understanding of the in-between cases where states and societies are *not* equally enthusiastic about the change stemming from newly adopted norms.

**Figure 2.1    Norm Types and Expected Outcomes**

		Norm Content / Acceptability to Societies	
		Particular	Universal
Norm Effect on Governments	Regulative	<i>Anti-Corruption</i> (weak support from governments and societies)	<i>Medium success norms</i> (opposition from governments only)
	Constitutive	<i>Medium success norms</i> (opposition from societies only)	<i>Human Rights</i> (strong support from governments and societies)

<sup>111</sup> To the extent that society and state predispositions in receiving a new norm are not identical (and the above comparison, as well as existing research on norms, have shown that they are not), including both dimensions in our models is necessary.

Figure 2.1 above summarizes the theoretical framework to be developed in the remainder of this dissertation. It captures the difference in the dynamics surrounding the acceptance of a norm by governments and societies. As such, the framework offers testable hypotheses about the individual norm types, evolution of norms and their past or potential shifts across cells, and also the strategies chosen by relevant actors interested in facilitating such movement. This careful exploration of the relative weight attributed to each of the two dimensions, as well as the interactions between them, will lead us to explain the range of outcomes associated with international norm promotion. Why do some norms meet with considerable (high) success in their proliferation (the universal-constitutive cell), while others score low on this measure (the particular-regulative cell)? What are the sources of mixed (medium) proliferation success? Will the likelihood of cross-national convergence in norm-derived practices depend on a shift in the positions of governments or societies?<sup>112</sup>

I have referred to the two dimensions differentiating between international norms as designating a continuum. Much like we need to pay attention to subtle gradation between norms across cells, we have to acknowledge the differentiation between norm cases *within* these cells. Allowing for variation between sub-approaches to individual norms, is only one analytical step removed from recognizing the international world of norms as inherently fluid and malleable. Especially if we consider that grouping demands for normative change into broad-sweeping packages has been a strategy that NGO, IGO, or governmental actors adopt to highlight the relevance of the issues at stake. Over time, however, it is not immediately clear which elements of the rich discourse surrounding those norms they have in mind. When discussing corruption, do

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<sup>112</sup> Following a rationale outlined by George and Bennett, differentiating the independent variable in this way allows for a more discriminating analysis of the effectiveness of norm-proliferation measures, and identifying the factors that favor and/or handicap that process. George and Bennet, *Case Studies and Theory Development in the Social Sciences*, 85.



they mean bribery, extortion, petty corruption, state capture, or the gift-giving culture present in many societies? Which of these “vices” should be met by which policy remedies and what will be the norm-based justifications used in promoting them? These are relevant questions that hint at the reasons behind the often clouded definition of the anti-corruption norm itself. Calling attention to such intra-cell, intra-norm variation represents an important corollary to the main claims deriving from the norm taxonomy proposed here. It is essential for the present inquiry about the relative appeal of norms. It highlights the interaction between relevant norm-promotion discourses and the broader international context.

Linking this logic to norm-promotion strategies, the reasons for differentiating not just between norm types but also among the individual claims that make up a “single” norm are three-fold. First, keeping our eyes open for different norm components allows us to connect arguments about norm proliferation with accounts of soft law transformations into (quasi) hard law.<sup>113</sup> In other words, if norm promoters stress the aspects of a norm that are most readily transferable to new contexts, it may establish initially shallow roots that eventually grow stronger and permit the gradual “enculturation” demanded by socialization approaches to international norm diffusion.<sup>114</sup>

There is, however, a flip side to this implicit hierarchy between individual normative claims, and also the second reason for avoiding reducing norms to a convenient label. It is possible for actors to hijack otherwise accepted and well-positioned norms to align them with their narrowly defined interests and consequently increase international skepticism, starting a slippery slope of exceptions. This kind of scenario unfolded when the United States and British

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<sup>113</sup> Jeffrey L. Dunoff, Steven R. Ratner, and David Wippman, *International Law: Norms, Actors, Process: A Problem-Oriented Approach* (New York, NY: Aspen Publishers, 2006); Christian Reus-Smit, *The Politics of International Law* (Cambridge, UK; New York: Cambridge University Press, 2004).

<sup>114</sup> Meyer et al., “World Society and the Nation-State.”

governments used human rights arguments to (partly) justify the attack on Iraq in 2003,<sup>115</sup> only to be followed by doubts about their commitment to that norm when evidence about the use of torture as an interrogation technique and mistreatment of prisoners surfaced, undermining the human-rights agenda as a whole.

Finally, and relatedly, the success of one aspect of a norm may result in false hopes for its other components and result in conflicting messages that ultimately do not permit targeted approaches to individual norm-promotion challenges. For instance, where institutional reforms designed to alter incentive structures and curb extortion as one form of corrupt behavior have been relatively effective,<sup>116</sup> measures to reduce the potential for state capture by domestic and international actors remain elusive.<sup>117</sup> And if we accept that corruption as a social phenomenon is subject to threshold-linked patterns of behavior,<sup>118</sup> reducing it partly or only in a limited area may do little for eradicating such practices from political and economic competition worldwide. Even worse, success in defining corruption as problematic in specific issue areas may lead to its overall perception as a more widespread practice than it may have been previously, encouraging further violations of the newly-present norm.

In sum, sensitivity to individual components of norms which may otherwise seem homogenous is essential for tracing the reasons behind their relative success. The approach presented here highlights the contrast in the ability to internalize or formally adopt a norm by societies and governments, respectively. The continuum-based perspective is useful in providing

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<sup>115</sup> Stephen Toope, "Powerful but Unpersuasive?," in *United States Hegemony and the Foundations of International Law*, ed. Michael Byers and Georg Nolte (Cambridge: Cambridge University Press, 2003); Tony Blair, "Full Statement to the House of Commons, 18 March 2003 " in *A Matter of Principle: Humanitarian Arguments for War in Iraq*, ed. Thomas Cushman (Berkeley: University of California Press, 2005).

<sup>116</sup> Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 1999).

<sup>117</sup> Joel S. Hellman, Geraint Jones, and Daniel Kaufmann, "Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition," ed. Regulation World Bank Institute; Governance, and Finance Division (Washington, DC: The World Bank, 2000).

<sup>118</sup> Granovetter, "Threshold Models of Collective Behavior."

a better understanding of the underlying norm contestation and, ultimately, the expected likelihood of their international proliferation.

## Looking ahead

So far, the approach to developing this theory has been inductive, using in-depth exploration of carefully selected norms.<sup>119</sup> The goal has been to specify further the two key independent variables (norm content and norm effect) and identify the mechanisms through which they produce divergent outcomes. Yet, the picture becomes more interesting, and telling, when governments and their constituencies diverge in their reactions to a norm. The purpose of the differentiation between the incentives faced by states and their respective societies is to uncover the limitations of the conditionality asymmetries. These governed the adoption of *acquis communautaire*<sup>120</sup> by prospective members and affected the success of norm internalization (as opposed to implementation), following the entry of post-communist societies into the EU.

We are led to think by most existing accounts on the subject that governments are the main transgressors against many widely held principles. These violator states are pressured into compliance by their peers, as well as by international and transnational organizations in alliance with domestic forces. That was the model used to describe the rise of the human rights norm to prominence and it also applies to the women's rights advocacy, anti-personnel landmine ban, as well as a multitude of environmental causes. In principle, the accounts of international norm proliferation characterized by bottom-up activism are not surprising. It is common for societies to impress their will onto their respective governments – in democracies this occurs with every

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<sup>119</sup> A similar approach to studying transnational politics was chosen by Margaret Keck and Kathryn Sikkink. Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*.

<sup>120</sup> The full, 80,000 pages long collection of laws valid in the European Union.

referendum or regular election. Non-democratic regimes encounter this pressure as well, even though for change to transpire more force may be required.<sup>121</sup>

The variety of protest forms notwithstanding, past research emphasizes the role of societies in *facilitating* the spread of good<sup>122</sup> international norms and the above examples all illustrate this point equally well. The targets of these internationally encouraged societal upheavals are almost exclusively their respective governments. Popular discontent is equated with “setting things right.” It is as if societal support is always there and endorsement from governments is all that is missing – even the most impenetrable of human rights violating regimes, many of them in the Soviet camp, were turned around once the governments gave in. But evidence is accumulating that this picture is hugely one-sided and dangerously incomplete. Once the government is not the main opponent of norm change, the boomerang effect is no longer operational,<sup>123</sup> necessitating the revised theoretical approach presented here.

My framework deliberately refers to norm change, rather than “progress.” Local rejection of some purportedly international norms need not amount to having joined the “wrong” side of the battle. Instead, such behavior points to the limits of these particular norms in reaching a universal status. Thus, the normative statement of this project, if there must be one, should not be seen as the quest for conformity of international norms with an a priori desirable model. On the contrary, by categorizing international norms based on their disparate effect on governments and societies, my approach calls for recognizing the *lack* of similarity between different norms and the consequences this has for their relative success. The comparison of human rights and anti-

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<sup>121</sup> The “boomerang effect” of circumventing closed avenues for domestic opposition provides this more dramatic evidence. Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*.

<sup>122</sup> By referring to “good” norms here I do not mean to evoke a pre-defined set of values that may or may not exist in the international system. Characterizing certain norms in this way is intended merely to highlight the difficulty with which they are opposed – those that defend them see their actions as justified on grounds that even their opponents would be hard pressed to describe as illegitimate. This argument underlies the norm categorization developed in this chapter and more detail on the subject will be provided below.

<sup>123</sup> Florini and Sentā, *The Third Force: The Rise of Transnational Civil Society*, 205.

corruption is rooted in both structural and interaction-based realities surrounding the norms' proliferation. In the deductive test of the proposed typological theory that is to follow, norms are examined strictly for the observable variation in their reception by societies and governments, i.e. norm type. I desist from making any value judgments regarding the inherent desirability of their promotion.

## CHAPTER 3: MINORITY RIGHTS AND NUCLEAR SAFETY CLASSIFIED

In its key contribution, this project differentiates between norms based on their content, or their acceptability to individual societies (not to be equated with acceptance). I label the two norm types occupying the opposite extremes of this continuum *particular* and *universal*. Norm effect and norm content have been arranged in a two-dimensional space and a norm's location in this space determines the ease with which it will be implemented by governments and internalized by societies. The classification along each axis represents the next step in defining minority rights and nuclear safety. As a reminder, the five indicators used to determine the particular/universal qualities of norms examined in the previous chapter include 1./ norm origin, 2./ the context surrounding norm violation, 3./ norm institutionalization, as well as the extent to which 4./ local material realities matter and 5./ promoter strategies vary. Once we determine how the minority rights and nuclear safety norms score on these five "measures," we can better anticipate the sources of opposition to each of them and tailor our empirical inquiry accordingly.

### **Finding a Place for Minority Rights**

Sometimes more useful than the answers my interviewees provided during my fieldwork were the questions they asked. Lýdia Gabčová of the Open Society Institute in Slovakia hardly let us settle over coffee when she asked "so, how do they think about minority rights in Brussels?"<sup>124</sup> Her curiosity matched the questions about Eastern European attitudes on minority rights European Parliament officials asked from their end of the mediated exchange. Despite a dense network of interactions stimulated by pre-accession demands, the talking past each other

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<sup>124</sup> Interview with Lýdia Gabčová, Open Society Institute, Bratislava, January 13, 2009.

has continued. In addition to uncovering the disconnect in framing minority rights between the two sides of the (former) EU border, we need to explain the mixed success with which the norm met in the new member states. I argue that the two are related. A study of country cases can provide insights about the government and societal responsiveness to external pressure, as well as the role of pre-existing normative structures in facilitating or impeding norm change. The first step, however, must be to define the minority rights norm by examining the attributes that make it either particular or universal and regulative or constitutive under the present framework.

### *Particular or Universal?*

In post-communist Europe the approaches to integrating minorities vary from country to country and are weighed down by historical experiences that divided or brought together the different ethnic groupings over time. It is not uncommon for minorities to have once dominated<sup>125</sup> the present majority populations, as in the Baltic region or in successor states to Austria-Hungary. This history taints each minority-majority dyad in a unique way and results in considerable variance in the treatment of minorities even within countries, much less between them. Referring to an East-European approach to minority rights therefore amounts to taking a major analytical shortcut that brushes over important differences. Conversely, alluding to a unified take on minority integration that is shared by the West European democracies represents a similar transgression against empirical accuracy. Policies targeting indigenous minorities and immigrant populations have been developed independently by each old EU member and the only overlapping feature is the generally low priority attributed to this problem in established democracies. Will Kymlicka therefore rightfully warns against focusing on “how well... the policies of East-Central European countries regarding ethnic relations conform to well-defined

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<sup>125</sup> Politically, if not numerically.

and long-standing Western principles, for there are no such principles.”<sup>126</sup> This artificial separation between old and new European democracies when it comes to their treatment of minorities has been criticized along with the less context-specific but nevertheless misleading distinction between civic and ethnic nationalism.<sup>127</sup> Yet, while there seems to be no single minority rights norm in Europe, its various versions usually have not travelled far from the context in which they were created. This makes their respective origin relatively easy to identify. To some extent, this is the case even with components of the currently most prominent instrument for addressing minority rights in Europe, the Framework Convention for the Protection of National Minorities.

The Convention was developed under the umbrella of the Council of Europe in part to unify the multitude of existing approaches and to set some basic standards on the treatment of minorities. Indeed, the document contains numerous guidelines in this regard but it also betrays the lowest-common-denominator approach that often burdens international agreements. What is conspicuously lacking, for example, is a decisive stance on which groups constitute a national minority. The Convention simply assumes the existence of these minorities and grants all individuals the right to claim membership in such groups. It remains silent, however, on the specific attributes that objectively make a group a national minority, which would also require all Council of Europe members to recognize and protect such collectivities. In the language of the document’s drafters, the Framework Convention leaves states “a measure of discretion in implementation of the objectives...thus enabling them to take particular circumstances into

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<sup>126</sup> Will Kymlicka and Magda Opalski, eds., *Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe* (New York, Oxford: Oxford University Press, 2001), 15.

<sup>127</sup> Stephen Shulman, "Challenging the Civic/Ethnic and West/East Dichotomies in the Study of Nationalism," *Comparative Political Studies* 35, no. 5 (2002); Rogers Brubaker, *Ethnicity without Groups* (Cambridge, MA: Harvard University Press, 2004), 132-46.



account.”<sup>128</sup> The Convention’s interpretation-friendly phrasing and sensitivity to member state concerns certainly has its upsides in terms of flexibility. It is precisely this flexibility, however, that provides crucial hints about the “particular” quality of the minority rights norm as embodied by the Framework Convention. A version of the norm that would be far removed from local specificities and could take on a truly international status is thus still in the distant future.

Despite these underlying ambiguities, both the Council of Europe and the EU enlargement officials have had to make a decision regarding the specific constraints imposed by the norm. Unable to arrive at an agreement in defining national minorities, the Convention’s aim turned to specifying the relationship between the state and members of minorities. These include regionally concentrated nationalities with a kin state across the border, ethno-religious communities sharing a strong identity but not necessarily the same territory, or populations that find themselves stateless as a result of recent ethnic conflict and territorial reshuffling.<sup>129</sup> And the list could go on. One way to reconcile the needs of such diverse groups is to cease viewing them as groups and instead focus on the individuals that make them up. As a result, the language of the Framework Convention refers exclusively to “persons belonging to national minorities” and the rights the document bestows are seen as individual rights.<sup>130</sup> This approach is anchored in anti-discrimination measures more generally. Even though the Framework Convention itself is not judicially enforceable, its focus on individual rights parallels existing anti-discrimination legislation valid in the European Union.<sup>131</sup>

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<sup>128</sup> "Explanatory Report to the Framework Convention for the Protection of National Minorities," Council of Europe, <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>.

<sup>129</sup> Ljubomir Mikić, "Croatia: Challenges for Sustainable Return of Ethnic Serb Refugees," (London: Minority Rights Group International, 2005).

<sup>130</sup> Articles 1 to 3 of the Framework Convention. Also see Boriss Cilevičs, "The Framework Convention within the Context of the Council of Europe," in *Filling the Frame: Five Years of Monitoring the Framework Convention for the Protection of National Minorities* (Strasbourg: Council of Europe, 2004), 29.

<sup>131</sup> Racial Equality Directive, 2000/43/EC, and the Employment Equality Directive, 2000/78/EC. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,

Members of all minorities can no doubt benefit from being individually guaranteed the rights following from their membership in a group. The individual-oriented rights derive directly from the integrationist approach to multiculturalism, prevalent in Western European democracies. If we are willing to take this more general perspective on the model of rights contained in the Framework Convention, we can recognize the degree to which the approach would seem narrow to EU candidate states (and especially their respective minorities). While providing an improvement, the Framework Convention is not exhaustive in the solutions it offers, as it disregards the desire of some minorities to enjoy their rights as groups. Such claims center around issues of education and collective cultural expression, implying that the private identities of minority members extend into the public life of these groups. Paradoxically because the Convention seeks to blur the differences between minorities, the individual-rights-only approach does not satisfy the needs of historic minorities, most of them in Eastern Europe.<sup>132</sup> This is yet another reason for us to refer to the Council of Europe / EU consensus on the minority question as non-universal.

The second measure of whether minority rights should be classified as a particular or a universal norm concerns the context surrounding the norm's violation (hypothetical or real). The key here is whether the verdict that certain minority protection standards are being violated is imposed externally or whether the violation is immediately apparent to those involved. One way of approaching this question, as I argued previously, is to determine whether and how the norm alters the patterns of interaction between groups or introduces new sources of accountability. The majority population and minorities have often co-existed in the same territory, which need not

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and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

<sup>132</sup> The PHARE funds from the EU were used in programs that highlighted the existing problems but were not designed to effectively address them. Guy and Kovats, "EU-Funded Roma Programmes: Lessons from Hungary, Slovakia and the Czech Republic."

have been the same state, for decades, even centuries. Friendly and open interaction between such groups exists but is by no means the rule and the nature of interethnic relations will vary over time or across levels of governance (depending on how high the stakes are). To the extent that the particular/universal dimension concerns primarily the behavior of societies, everyday attitudes towards minorities should be our focus.

For societies with a history of ethnic tensions, lapses in minority integration might be perceived simply as “the way things are” at home. Discriminatory behavior on the part of the majority is a serious problem but it is often deepened and perpetuated by complacency on the part of the minority. According to a survey conducted by the EU Fundamental Rights Agency (FRA) in early 2009,<sup>133</sup> one of the most commonly listed reasons why a high number (66% to 92%)<sup>134</sup> of Roma do not report experiences of discrimination to authorities was that they find such events “too trivial and not worth reporting – it’s normal and happens all the time.”<sup>135</sup> Increasing affected groups’ awareness of minority rights represents a major avenue for questioning discriminatory behavior by the majority and provides minorities with the tools to combat such attitudes. By the same token, the apparent unwillingness on the part of minorities to take up these new opportunities can be used to assess the intrusiveness with which the new norm enters established interethnic relations. As the above survey suggest, Roma in Europe do not seem prepared to challenge the status quo.<sup>136</sup> Aggravating the situation further, self-identification

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<sup>133</sup> On a sample of 500 Roma in states where they form a sizable minority, i.e. the Czech Republic, Hungary, Slovakia, Poland, Bulgaria, Romania and Greece.

<sup>134</sup> Depending on country - the lower bound figure was recorded in the Czech Republic and the gravest situation is in Bulgaria. "Data in Focus Report: The Roma," in *EU-MIDIS European Union minorities and discrimination survey* (European Union Agency for Fundamental Rights, 2009), 5.

<sup>135</sup> The percentage of respondents who expressed this view was 44% and it ranked third on the list. The most commonly listed reason for the reluctance to report discrimination was their belief that “nothing would happen or change” (78%). The second reason was lacking knowledge about where to turn with a complaint (52%). Ibid., 6.

<sup>136</sup> That kind of reticence is often combined with a mistrust of the judicial system as a whole. Galina Kostadinova, "Substantive Equality, Positive Action and Roma Rights in the European Union," (London: Minority Rights Group International, 2006), 2-3.

of Roma populations as belonging to the nominal nationality (e.g. Romanian, Bulgarian or Hungarian) in Eastern Europe has been a persistent problem for estimating the ethnicity's population size.<sup>137</sup>

Despite the introduction of the inclusive and individual-rights focused norm to the new EU member states, there has been little desire to revise the designation of victims and violators and both parties are at fault. At its heart, the minority rights norm defines discrimination and identifies certain groups as the victims and others as the violators. However, the minority members' reluctance or inability to claim the benefits the norm offers is telling about the ambiguity with which minority rights guarantees enter many societies. The right to have one's name spelled in the minority language represents one example of opening up room for cultural identification. If the equal status of minorities in a country is already acceptable and the norm does not introduce new definitions of victim and violator, members of minorities should not be afraid to change their name to the original spelling. In Slovakia, however, ethnic Hungarians often perceive the new option as opening up room for discrimination. Women belonging to the Hungarian minority were reluctant to drop the "ova" suffix that according to Slovak grammar designates female gender.<sup>138</sup>

The difficulties in breaking the vicious circle of minority exclusion are apparent also in the results from a recent *Eurobarometer* survey asking about discrimination perceptions in the EU. The findings uncovered a significant difference of 10 percentage points between the old and new member states. Only 11 percent of Eastern Europeans reported that they have personally experienced racial or ethnic discrimination, compared to 21 percent in the pre-enlargement EU

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<sup>137</sup> This was also an issue in the present study when three of the 42 participants in Slovakia, despite possessing the anthropological features and cultural profiles of the Roma minority chose to identify themselves as belonging to Slovak ethnicity. In addition, this sort of information is only available from survey responses provided in person and is impossible to glean from large-scale surveys or, as in my study, from internet responses.

<sup>138</sup> Interview with Kalman Petoetz.

members.<sup>139</sup> However, these numbers hardly mean that less discrimination takes place in the new member states. Instead, what the survey measures more closely is the degree of familiarity with the notion of discrimination and the ability to identify its occurrence, which presupposes acceptance of the minority rights norm. The Eastern European responses to the question more likely reveal mere indifference to discrimination, rather than its absence.<sup>140</sup> This interpretation is consistent with the results of another part of the same survey that inquired about the EU-sponsored year of equal opportunities (2007). Citizens in the old EU member states were slightly more aware of the initiative (38%) than the respondents from countries that joined the community most recently (32%).<sup>141</sup> In a more specific measure of awareness about minority rights issues, the FRA survey uncovered that most Roma in Eastern Europe believed discrimination in the workplace was not punishable by law.<sup>142</sup> From this survey evidence it is unclear that the call for equality expressed in the minority rights norm revises either the majority's behavior towards minorities, or the minorities' preparedness to take up the opportunities provided by the new norm. The measures for accountability prescribed by the incoming norm are entirely new to the host society. As a result, the minimal standards that the international measures on this issue introduce do not appear sufficient to revise the long-

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<sup>139</sup> "Discrimination in the European Union Perceptions and Experiences of Discrimination in the Areas of Housing, Healthcare, Education, When Buying Products or Using Services," in *Flash EB Series #232* (Brussels: Gallup for Directorate-General for Employment, Social Affairs and Equal Opportunities, 2008), 52.

<sup>140</sup> A cautious interpretation of positive results was applied also in the Fundamental Rights Agency sponsored study of Roma in Europe. According to the summary report, "it can be suggested that these favorable results are rooted in the fact that the Roma in Bulgaria, as reflected in the survey results, are more isolated from mainstream society, and effectively operate in a 'parallel society' with infrequent contacts with the outside world. "Data in Focus Report: The Roma," 12.

<sup>141</sup> "Discrimination in the European Union Perceptions and Experiences of Discrimination in the Areas of Housing, Healthcare, Education, When Buying Products or Using Services," 8.

<sup>142</sup> Czech Republic was the only from among states with sizeable Roma minority in which respondents crossed the 50% mark when asked whether they thought there was a law punishing discrimination on the basis of ethnicity when applying for a job. The other countries (Hungary, Bulgaria, Romania, Slovakia, Poland) remained well below this threshold. Interestingly, Greece proved to be the worst performer - only 11% of Roma were aware of such legislation - which further breaks down the clear division in approach to minorities between old and new EU members. "Data in Focus Report: The Roma," 7.

established patterns of social interaction. Locally valid conceptions of what minorities are entitled to and at which point their rights are violated pose too strong a counter-challenge to the Council of Europe promoted minority rights norm. Thus, on this measure we again have to note its quality as particular.

The third criterion for determining the particular/universal status of a norm focuses on the degree and kind of institutionalization that the incoming norm has encountered. The empirically testable question that was associated with this measure of norm “universality” asks whether the justifications for following the norm aim to draw a line behind the past. The more reframing and localizing adjustment is necessary, the further away the norm moves from deserving universal status.

Although the theoretical framework guiding this project uses the term universal with the intention of ultimately applying the typology to the global context, the empirical test in this chapter limits the application of the “universal” criterion to the EU policy arena, more specifically the case of the 2004 enlargement. Both in terms of changing policies and the discourse surrounding them, the moment of joining the Union should represent a natural divider between the pre- and post-adoption stages. If minority rights were to parallel the performance of the human rights norm on this measure and qualify as a universal norm, there would have to be a decisive divide between the situation before and after accession.<sup>143</sup>

The reality of introducing new minority rights standards to candidate countries has been very different, however. First, despite the fact that minority rights, as formulated by the Council

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<sup>143</sup> The key question here is not whether societies already agree to a norm but whether they would, were they granted the opportunity by their governments. In addition, establishing their actual support for the norm should be a matter not of theoretical classification but of empirical exploration. The analytical parsing out of the process is important for the subsequent test of the present theory. Finally, it is compliant with the rule-of-thumb prescription formulated by Barbara Geddes, who advises researchers to test their theory on different cases than those used to develop the theory. Geddes, *Paradigms and Sand Castles: Theory Building and Research Design in Comparative Politics*.

of Europe and adopted by the EU, were at the heart of the membership conditionality arrangement, discernible double standards soon plagued the process. As late as six months before its scheduled entry into the EU, Latvia had not ratified the Framework Convention for the Protection of Minorities<sup>144</sup> and it continued to drag its feet in streamlining the citizenship-granting policies. Although at odds with strict calls for implementing the Framework Convention by high EU officials,<sup>145</sup> Latvian failure to do so did not obstruct the country's membership in the EU. The Commissioner responsible for enlargement affirmed the Union's commitment to admitting Latvia and said that while the EU was "ready to back any initiatives intended to improve the situation of the Russian-speaking minority in Latvia," the issue would not affect the progression of talks leading up to accession.<sup>146</sup> In addition to undermining the commitment to the principles of conditionality, this move effectively blurred the separating line between the pre- and post-accession period, intended to symbolize irreversible acceptance of minority protection.<sup>147</sup> As a complaint from a Council of Europe representative suggests, the hope that an alliance with the EU would strengthen the norm dissolved quickly. The evaluation of candidate progress in integrating and protecting their minorities "degenerated into political bargaining"<sup>148</sup> and made the success of the norm less than automatic. Instead of benefiting from already existing support for the institutional changes that the minority rights norm brought to candidate countries, it had to struggle for legitimacy. This became particularly notable in moments of political crisis,

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<sup>144</sup> It eventually did so in 2005.

<sup>145</sup> Commissioner Reding cited in Čilevičs, "The Framework Convention within the Context of the Council of Europe," 36. Throughout the accession process, President of the European Commission Prodi and Enlargement Commissioner Verheugen also made frequent remarks confirming the priority attributed to minority rights in assessing candidate country preparedness to enter the EU.

<sup>146</sup> Schimmelfennig, Engert, and Knobel, "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey."

<sup>147</sup> In a similar manner, Slovakia's final accession report pointed to gaps between policy formulation and on-the-ground implementation, yet the country's EU membership remained unobstructed at this time. Kostadinova, "Substantive Equality, Positive Action and Roma Rights in the European Union," 7.

<sup>148</sup> Čilevičs, "The Framework Convention within the Context of the Council of Europe," 36.

such as those accompanying the briefly violent anti-reform protest by Slovakia's Roma population in 2004. The implicit rejection of the externally imposed institutional solutions focusing on altered incentive structures resulted in a challenge of the norm (that mandated social inclusion of minorities) itself, which effectively revealed its "particularity."

The absence of a clean slate regarding minority rights in candidate countries is not the only obstacle to our designating the norm as a Europe-wide principle with regard to the break-with-the past criterion. The double-standard thinking and willingness to settle for less than the minimum requirements that marked the evaluation of prospective members was detectable also in the old member states.<sup>149</sup> This raises serious questions about the universal applicability of the minority rights norm in Europe. Unlike the case of human rights in the course of fulfilling the 1975 Helsinki promise, EU enlargement and the normative change it brought did not allow candidate states to point to existing EU members with approval, nor did it generate a strong desire to follow in old members' footsteps. As members of the NGO community monitoring the process correctly pointed out, candidate states were urged to adopt the Framework Convention, even though some old EU members had not done so either.<sup>150</sup> Greece, France, Belgium, Portugal, Luxembourg and even the Netherlands and Sweden were repeatedly called upon by the European Parliament to ratify the Framework Convention in the period leading up to EU

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<sup>149</sup> It is often pointed out that had the EU held Greece to minority standards devised for the 2004 set of new entrants it would not have been admitted into the Union. Elena Gallová Kriglerová, Lucia Najšlová, and Aneta Világi, *Odpoveď Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku [the Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia]* (Bratislava: Research Center of the Slovak Foreign Policy Association, 2009), 21.

<sup>150</sup> Heather Grabbe, "European Union Conditionality and the "Acquis Communautaire"," *International Political Science Review / Revue internationale de science politique* 23, no. 3 (2002); Mark Lattimer, "The Framework Convention as a Catalyst for Action at Domestic Level: The NGO Perspective," in *Filling the Frame: Five Years of Monitoring the Framework Convention for the Protection of National Minorities* (Strasbourg: Council of Europe, 2004), 63.



enlargement.<sup>151</sup> In other words, the line between the past without a Framework Convention and the future in which its principles would be accepted kept shifting, depending on which EU institution you asked and which country you were speaking off. This scenario is at odds with the criterion required for a norm's universal (in this case Europe-wide) applicability. The degree of minority rights institutionalization thus leads us to describe the norm as particular, again.

Fourth, we have to determine the role that local material realities play in facilitating or impeding the adoption of the norm. The understanding of "material realities" in this context has to be rather broad. It is not sufficient to focus merely on the relative socio-economic status of various ethnic groups.<sup>152</sup> We also need to pay attention to the political-economic pathways and historical turning points that led to the status quo. The inter-ethnic experience in each country is different and this variation matters a great deal in the process of creating and promoting a unified minority rights norm. The norm shows signs of inadequacy in dealing with the complex set of issues that make up minority politics in Europe. My project is not indifferent to the path dependencies leading to the status quo of minority rights. The case study comparison of Lithuania and Slovakia that will be taken up in the latter half of this chapter will explore the structural and historical determinants of ethnic relations more closely. More immediately, an illustration of the variation between local contexts and the degree to which they matter in determining the norm's success can help our effort to classify minority rights in the proposed framework.

The thick volume on ethnic conflict by Donald Horowitz originally published before the break-up of Soviet-era federations does not contain many references to Eastern Europe.

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<sup>151</sup> Although the explicit link between the two processes was not made. Florian Geyer, "A Synthesis of the Former Ep Resolutions in the Field of Fundamental Rights," in *EP Briefing Papers* (Brussels: European Parliament, 2007), 6-8.

<sup>152</sup> Having said that, the generally destitute situation of the Roma, for example, provides both contrast between minorities and similarity across countries.

Nevertheless, his broader statement about minority-majority tensions is telling. In the discussion of solutions to ethnic hostility he warns against *a priori* prescriptions that do not match the unique needs of each divided society.<sup>153</sup> The lesson applies to new sites of ethnic strife as well. For instance, whereas democratization in Spain opened up the opportunity for granting regional autonomy rights to Catalans, Basques, and Galicians, the question of self-governance poses a much greater challenge in post-communist Eastern Europe. Insecurities about newly acquired statehood overwhelmed Latvia, Estonia or Slovakia, and the claims of their regionally concentrated minorities with ties to unpopular kin states across the border acquired the significance of threats to state sovereignty. Such historically driven arguments about national security are not rare in Eastern Europe. A long-standing pattern of protecting different minorities differently further aggravates the situation.<sup>154</sup> What worked in one context need not apply to another, and the same holds true for transferability of lessons within the post-communist region.

The evidence regarding high and growing variation in local attitudes towards minorities comes from two directions. First, we only need to look at the increased ethnic diversity that characterizes post-enlargement European Union to determine that simple solutions of the past will not do.<sup>155</sup> An additional hint about the norm's particularity with regard to local constraints comes from the difficulties that the drafters of the Council of Europe Framework Convention encountered in arriving at a shared definition of "national minority." The widespread disagreement resulted in substantial leeway for states to formulate such definitions on their own. The treaty has been viewed negatively for failing to set a unified and strict-enough approach to minority rights. As a trade-off for vagueness, it allows for individualized approaches to mirror

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<sup>153</sup> Donald L. Horowitz, *Ethnic Groups in Conflict*, 2nd ed. (Berkeley and Los Angeles: University of California Press, 1985), 576.

<sup>154</sup> Miriam J. Aukerman, "Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context," *Human Rights Quarterly* 22, no. 4 (2000): 1046.

<sup>155</sup> Geyer, "A Synthesis of the Former Ep Resolutions in the Field of Fundamental Rights."

the unique challenges in each context. However, the more specific these solutions become the more difficult it is to apply them elsewhere. Structural obstacles to inter-ethnic accommodation are what Horowitz had in mind when he criticized “stroke-of-the-pen and crack-of-the-whip measures” imposed from above as ineffective and potentially counterproductive.<sup>156</sup> The material challenges offer additional evidence in favor of classifying minority rights as a particular norm.

The fifth and final attribute of a norm that can help us discern whether it should be labeled particular or universal focuses on actors most directly involved in advancing the acceptance of the norm across Europe. The NGO community has been keeping a close eye on the progress in implementing the changes necessary to improve the status of national and ethnic minorities in Eastern Europe. The official monitoring process accompanying Council of Europe’s Framework convention was paralleled also by a set of shadow reports by local Helsinki organization and other national-level NGOs involved in promoting the rights of minorities. These reports supplement the state-reporting mechanism, which often fails to incorporate meaningful participation from the non-governmental sector. The main objective of NGOs issuing the shadow reports is to track the practical aspects of compliance (or lack thereof) with the Framework Convention.<sup>157</sup> In other words, whereas the governments generally “specialize” in easier-to-come-by formal adoption of laws regulating minority rights, non-governmental organizations focus on the presence or absence of real changes in the treatment of minorities. In their collective declaration, NGOs monitoring state compliance with the principles stated in the Framework Convention have complained about the lack of resources that curtails the scope of

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<sup>156</sup> Horowitz, *Ethnic Groups in Conflict*, 567.

<sup>157</sup> “Alternative Report on the Implementation of the Council of Europe Framework Convention for the Protection of National Minorities in Latvia,” (Riga: Latvian Centre for Human Rights, 2008), 2.

their activity, which perhaps explains the absence of an organized EU-wide network of NGOs.<sup>158</sup> Even though the monitoring process is anchored by references to the Framework Convention, the document's vague language and country-specific challenges prevent minority rights activists from abandoning their country-specific focus.

However, the line of sight among minority-rights advocates is often even narrower than the corresponding state boundaries. Frequently, these activist organizations further limit their attention to individual minority communities, even though the demands the different groups make overlap and room for cooperation or coordination exists. This likely stems from the desire to preserve a distinct sense of identity vis-à-vis other ethnic groups, as much as the majority. Given such priorities, EU-funded projects have faltered whenever the need arose to look beyond localized activity and the resulting limited capacity has stood in the way of successful absorption of PHARE and structural funding.<sup>159</sup> The dynamic is further fuelled by state-driven attempts at minority integration modeled on Western approaches that are not sufficiently sensitive to the needs of diverse cultural and ethnic groups. In the Czech Republic, the emphasis was placed on small projects consistent with the objectives of strengthening civil society capacity and democracy, which is a separate goal from advancing the social inclusion of minorities.<sup>160</sup> Striking the balance between integration that is not assimilation and identity-building that is not state subversion remains one of the most difficult challenges faced by NGOs in Eastern Europe. These key non-state actors describe the protection of minority rights in as "both a history and a

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<sup>158</sup> "NGO Declaration on the Framework Convention for the Protection of National Minorities," <http://www.minorityrights.org/7419/minorities-in-the-news/ngo-declaration-on-the-framework-convention-for-the-protection-of-national-minorities.html>.

<sup>159</sup> Guy and Kovats, "EU-Funded Roma Programmes: Lessons from Hungary, Slovakia and the Czech Republic," 6-7.. Interviews with Lydia Gabcova and Andrea Buckova.

<sup>160</sup> Ibid., 7.

process.”<sup>161</sup> As long as the country- and minority-specific approach dominates NGO practice, however, we have to refer to the minority rights norm as particular.

### *Constitutive or Regulative?*

Having made the non-universal conclusion on all counts regarding norm content, which measures the transferability of minority rights standards, we must not forget to locate the norm along the second dimension that delimits the analytical space explored by this dissertation. Existing international relations literature has addressed the difference between constitutive and regulative norms in considerable detail.<sup>162</sup> The distinction has played a significant role in outlining the interest-shaping role that certain international norms have in affecting state behavior.<sup>163</sup> This brings us back to the original separation of motivations on the part of governments, as opposed to societies. I have argued that these two halves of the norm proliferation process need to be studied separately, while keeping a close eye on the ways in which they interact.

The process of EU enlargement combined two very separate elements. First, there was the strong urge on the part of the candidates to belong to a community of democracy-respecting and respectable states. The old member states received these aspirations with some apprehensiveness and sense of responsibility and before long they began to set the entry

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<sup>161</sup> "NGO Declaration on the Framework Convention for the Protection of National Minorities."

<sup>162</sup> Finnemore and Sikkink, "International Norm Dynamics and Political Change."; Peter J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996); Legro, "Which Norms Matter? Revisiting the 'Failure' of Internationalism."; Ruggie, "What Makes the World Hang Together."; Alexander Wendt, *Social Theory of International Politics* (New York, NY: Cambridge University Press, 1999).

<sup>163</sup> Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, "Norms, Identity, and Culture in National Security," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996); Klotz, *Norms in International Relations: The Struggle against Apartheid*.

standards higher than ever before.<sup>164</sup> The desirability of EU membership rested to a large degree on the difficulty of getting in. Beyond tangible material gains, the symbolic value of having drawn a line behind the communist past<sup>165</sup> and “returned to Europe” was at stake for the candidate countries.<sup>166</sup> This created an unprecedented dynamic of rhetorical exchanges and principled commitments by leaders of states on both sides of EU’s border.<sup>167</sup> The justifications for reform became just as important as change itself. Fuelling this dynamic, enlargement officials in Brussels spun the increasingly intricate web of standards that the candidates raced to meet in order to prove their adherence to the newly salient EU values. Guarding the principles of democracy, rule of law, and human rights ranked extremely high in this ordering of priorities and accompanied the process from its earliest stage and throughout the pre-accession monitoring. Respectful treatment of minorities soon became the litmus test for the determination to live up to the promises made in EU’s waiting room. The European Commission (EC) thus took the opportunity to increase the pressure when one candidate country failed to pass this simple test.

Referring to a controversial language law and pointing to the dissonance between the rhetoric of Slovak leadership and actual minority policies in place, the EC opinion released in 1997 complained:

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<sup>164</sup> Geoffrey Harris, "The Democratic Dimension of EU Enlargement: The Role of Parliament and Public Opinion," in *Norms and Nannies: The Impact of International Organizations on the Central and East European States*, ed. Ronald H. Linden (Rowman and Littlefield: Lanham, MD, 2002).

<sup>165</sup> Abdelal, *National Purpose in the World Economy: Post-Soviet States in Comparative Perspective*.

<sup>166</sup> Václav Havel, "Speech by Václav Havel, President of Czechoslovakia - the Polish Sejm and Senate.," [http://old.hrad.cz/president/Havel/speeches/1990/2501\\_uk.html](http://old.hrad.cz/president/Havel/speeches/1990/2501_uk.html).

<sup>167</sup> Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives*; Geoffrey Pridham, "EU Enlargement and Consolidating Democracy in Post-Communist States: Formality and Reality," *JCMS: Journal of Common Market Studies* 40, no. 5 (2002); Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union," *International Organization* 55, no. 01 (2001); Schimmelfennig, "European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe "; Vachudova, *Europe Undivided: Democracy, Leverage & Integration after Communism*.

Slovakia has not yet passed comprehensive legislation on [the use of minority languages in official communication] and has gone back on the commitments it gave earlier... This ambiguous situation is further aggravated by certain government decisions concerning the Hungarian minority, such as reductions in subsidies granted to Hungarian cultural associations and cessation of bilingual school reports in Hungarian schools (a teacher not respecting this rule can be dismissed).<sup>168</sup>

The opinion was followed by a series of “last warnings” and eventually led to a withdrawal of Slovakia’s EU candidate status. Monitoring the respect for rights of Eastern Europe’s national minorities represented uncharted territory for EU’s old member states, who had not encountered the problem on a large scale before. Nevertheless, the minority rights norm, as adopted from the documents developed by the Council of Europe, came to define EU membership for the candidates. To the extent that it changed their behavior, affected the justifications used to legitimize their actions, and generated domestic debate on the issue, it had a constitutive effect on these states.<sup>169</sup>

### **Defining the Nuclear Safety Norm**

To the average EU citizen, the notion of nuclear safety is likely to come as something desirable, but relatively vague. She might associate it with an inkling about how having too many X-ray exams per year may harm her health, a distant memory of the Chernobyl accident that briefly changed how she shopped for groceries, and perhaps a recent news story about events at Fukushima or about the dangers of radioactive material landing in the hands of terrorists. The

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<sup>168</sup> "Agenda 2000 - Opinion on Slovakia," (European Commission, 1997).

<sup>169</sup> A similar argument in connection to the anti-apartheid struggle in South Africa is made by Klotz, *Norms in International Relations: The Struggle against Apartheid*, 34.

scientific detail behind how radiation harms humans, how much is too much, or how it might escape a normally functioning nuclear power plant will probably remain beyond her grasp. She is also likely to be unfamiliar with the economics of operating and closing down a power plant or the comparative cost of nuclear-generated electricity, relative to other sources. Yet, in the end, she will feel very strongly about demanding the highest levels of safety for all nuclear installations in her vicinity.

In 2010, over half of Europeans (51%) thought that the risks posed by nuclear power were greater than the advantages it brings.<sup>170</sup> The same Eurobarometer survey revealed that most Europeans consider the risks of nuclear power underestimated.<sup>171</sup> Meanwhile, 68% of them recognize the value of nuclear energy in making the EU less dependent on fuel imports, 51% agree that it helps secure more competitive and more stable energy prices and 46% see it as a positive contribution in the fight against climate change.<sup>172</sup> In other words, while considerably uneasy about the existence of nuclear power plants in their wider neighborhood,<sup>173</sup> Europeans seem generally aware of the reasons for not being able to quite do away with this energy source in the near future. When most of them view nuclear power as a necessary evil or a reluctantly swallowed risk, it should not surprise us that they are “extremely conscious of the importance of safety and protection, as far as nuclear energy is concerned.”<sup>174</sup> Along with that sentiment come calls for a strict regulation of the nuclear sector and endorsement of all measures enhancing the safety of all nuclear sites. This, again, is entirely separate from actual knowledge about what it takes to physically make a nuclear plant safer or how much the necessary upgrades would cost.

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<sup>170</sup> Eurobarometer, "Eurobarometer: Europeans and Nuclear Safety," (Brussels: European Commission, 2010), 41.

<sup>171</sup> Ibid., 45.

<sup>172</sup> Ibid., 12.

<sup>173</sup> 34% would like to see the proportion of nuclear power in Europe's energy mix reduced and 39% think it should remain the same, with only 17% advocating an increase. Ibid., 24.

<sup>174</sup> Ibid., 11.



As far as the average EU citizen is concerned, those details are for regulating agencies, plant operators, and governments to work out.

Ultimately, this gap between ideals and practicalities of nuclear safety is where the room for divergence in preferences and priorities between societies and their governments opens up, instantaneously transforming the nuclear safety norm into a compelling case for testing theories about international norm proliferation within the framework proposed here. The tension between governments and their respective publics becomes even more interesting when we consider that 82% of Europeans would like to see nuclear safety regulated at the EU level,<sup>175</sup> in addition to employing existing domestic agencies for this task. This dual pressure has the potential to crystallize the responses by governments and help us uncover the connection between the specific attributes of the nuclear safety norm and the likelihood of its success in individual member states.

### *Particular or Universal?*

The process of defining the nuclear safety norm goes hand in hand with uncovering the norm's origin. Perhaps the key aspect that distinguishes nuclear safety from the minority rights norm examined previously concerns the target of the norm – the safety that is at stake involves the operation of pieces of machinery, which, however complex, remain indifferent to the current regulatory standards. A nuclear accident is equally undesirable across reactors, plants, and countries. This is perhaps the reason why it has been possible to develop strict standards at the international level, under the auspices of the International Atomic Energy Agency (IAEA). At this level, other norms often get only tentative measures gesturing in the direction of compliance

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<sup>175</sup> Ibid., 110.

hardly matching in strength the legally mandated rigorous review process instituted by the IAEA. The primary instrument presently regulating all planned, existing, and decommissioned nuclear sites is the Convention on Nuclear Safety and all countries with nuclear installations in their territory are subject to the its provisions.<sup>176</sup> The objectives of the Convention are:

- i. to achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international co-operation including, where appropriate, safety-related technical co-operation;
- ii. to establish and maintain effective defences in nuclear installations against potential radiological hazards in order to protect individuals, society and the environment from harmful effects of ionizing radiation from such installations;
- iii. to prevent accidents with radiological consequences and to mitigate such consequences should they occur.<sup>177</sup>

In part due to the broad formulation of these priorities, it is impossible to identify any one state or group of states as having formulated these minimum safety rules. Much of this obscurity regarding the source of the norm stems from the intensity of the shared experience with the near-miss incident at Three Mile Island (TMI) and the nuclear disaster in Chernobyl. The explosion of the latter plant's reactor spewed radioactivity across state borders and delivered a lesson in safety to all parts of Europe and beyond. Reflecting the universality of the experience, the widespread

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<sup>176</sup> According to the official website "the Convention is an incentive instrument. It is not designed to ensure fulfillment of obligations by Parties through control and sanction but is based on their common interest to achieve higher levels of safety which will be developed and promoted through regular meetings of the Parties. The Convention obliges Parties to submit reports on the implementation of their obligations for "peer review" at meetings of the Parties to be held at the IAEA. This mechanism is the main innovative and dynamic element of the Convention." Audie Klotz and Cecilia Lynch, *Strategies for Research in Constructivist International Relations* (Armonk, N.Y: M. E. Sharpe, 2007).

<sup>177</sup> IAEA, "Convention on Nuclear Safety," (Vienna: International Atomic Energy Agency, 1994).

effects of the disaster were cited as the main motive for drafting the IAEA Convention.<sup>178</sup> Even, prior to the G7 calls for coordinated efforts at maximizing nuclear safety, a 1989 EC communication stated that “the conclusions reached after the TMI accident, which were recently confirmed through the analysis of the Chernobyl accident, show that ‘no matter how well a reactor is designed and operated, a severe accident can never be totally ruled out’.”<sup>179</sup> More currently, the natural disaster in Japan that led to a failure of the reactor cooling systems at the Fukushima plant highlighted the industry’s vulnerability to factors beyond its control. In other words, there is no such thing as resting assured when it comes to nuclear reactors and a periodic review under the framework of the Convention is only our best attempt at preventing future accidents.

The explicit references to the 1986 catastrophe did not cease with the drafting and ratification of the Convention on Nuclear Safety, however. The theme continues to permeate both international documents and EU legislation on nuclear safety.<sup>180</sup> An illustrative exchange on proposed draft Council Regulation establishing an Instrument for Nuclear Safety reveals a push by the European Parliament to keep the memory and lessons of the accident alive.

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<sup>178</sup> "Economic Declaration: Working Together for Growth and a Safer World - Safety of Nuclear Power Plants in the New Independent States of the Former Soviet Union and in Central and Eastern Europe," (Munich: G8 Summit, 1992).

<sup>179</sup> Commission, "Communication of the Commission: Assurance of Safety of Nuclear Power Plants - Objectives and Methods," (Commission of the European Communities, 1989), 13.

<sup>180</sup> For additional references to the role played by the Three Mile Island and Chernobyl in triggering the efforts to raise nuclear safety standards see "Recyklačný Fond: Na Slovensku Triedi Odpad Viac Než Polovica Obcí [Recycling Fund: Over Half of the Municipalities in Slovakia Sort Their Waste]," *SME*, May 26 2007, 16; "Proposal for a Council (Euratom) Directive: Setting out Basic Obligations and General Principles on the Safety of Nuclear Installations," (Commission of the European Communities, 2003); "Communication from the Commission on the Nuclear Industries in the European Union," (Brussels: Commission of the European Communities, 1997), 21.

Text proposed by the Council:

The Chernobyl *accident* in 1986 highlighted the global *importance of nuclear safety*.

Amendment by the Parliament:<sup>181</sup>

The Chernobyl *nuclear disaster* in 1986, *which was the worst ever in terms of the number of its victims and the tragic health consequences for both those exposed at the time of the accident and the generations to come*, highlighted the *dramatic global economic, environmental, social and health consequences of such a disaster*.<sup>182</sup>

Documenting the wide impact that the Chernobyl disaster had on understanding criteria for nuclear safety, however, delivers only half of the picture regarding the identifiability of the origin of that norm. The extensive overlap in the definition of the norm at the international, regional, and national level suggests that individual societies have not sought to compete with the global standards. Unlike the case of anti-corruption, the formulations of the nuclear safety norm do not get narrower and more country-specific as we climb down the international ladder. The wording of the nuclear safety Directive agreed upon by EU member states closely mirrors the priorities stated by the IAEA:

‘nuclear safety’ means the achievement of proper operating conditions, prevention of accidents and mitigation of accident consequences, resulting in protection of workers and the general public from dangers arising from ionizing radiation from nuclear installations;<sup>183</sup>

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<sup>181</sup> The italics indicate the specific phrasing modified in the Parliament-proposed version of the Regulation text.

<sup>182</sup> "European Parliament Legislative Resolution of 22 April 2009 on the Proposal for a Council Directive (Euratom) Setting up a Community Framework for Nuclear Safety (Com(2008)0790 – C6-0026/2009 – 2008/0231(Cns)),\" (2009).

<sup>183</sup> "Council Directive 2009/71/Euratom of 25 June 2009 Establishing a Community Framework for the Nuclear Safety of Nuclear Installations,\" (Official Journal of the European Union, 2009), 20.

And the overlap between the IAEA Convention on Nuclear Safety and EU legislation does not end there. The Directive explicitly stipulates that the safety review be carried out in conjunction with the IAEA instrument.<sup>184</sup>

Following the adoption of the Directive by the Council, there was some debate regarding the utility and added value of the new piece of legislation, given that it does not present the member states with more strict safety standards.<sup>185</sup> The EU Council chose to pursue this effort despite these objections because the Directive now ensures legal enforceability of nuclear safety principles that were legally binding but primarily incentive based under the IAEA umbrella. The main change in the treatment of nuclear safety challenges thus goes in the direction of legal ramifications of the norm, rather than substantive revisions to the norm itself at the EU level. At the same time, the preparedness of member states with nuclear installations on their territory to accept the Directive implies that they were committed to following the relevant safety regulations anyway.

The omnipresent references to the salient turning point on safety presented by the Chernobyl disaster and the near-uniform approach in securing the respect for ever-evolving safety criteria suggest that the origin of the nuclear safety norm is not tied to any individual country or region. The principles of the IAEA Convention on Nuclear Safety have been accepted

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<sup>184</sup> “Member States shall submit a report to the Commission on the implementation of this Directive for the first time by 22 July 2014, and every three years thereafter, taking advantage of the review and reporting cycles under the Convention on Nuclear Safety.” Ibid., 21.

<sup>185</sup> Interviews with Pekka Jarvilehto (DG ENVI) and Massimo Garriba (DG TREN) Even previous to the final passing of Council directive, Community added value has been recognized in building common views on nuclear safety issues, and Council resolutions have paved the way for co-operation between Member States and the Commission. "Report on the Implementation of the Obligations of the Convention on Nuclear Safety: 4th Review Meeting ", (Brussels: Commission of the European Communities, 2007), 33. Also see positions by the Czech Republic and Slovakia, Council 6.6.2003

practically without reservation by all member states operating civilian nuclear installations.<sup>186</sup>

The theoretical portion of this dissertation presents the extent to which shared experiences facilitate widespread comprehension and appeal of a norm as the key indicator of the norm's universal status. With regard to norm origin, therefore, there is ample evidence to suggest that nuclear safety does, in fact, fall in this category.

The second measure of norm content concerns the context surrounding the norm's violation. Specifically, we need to ask whether the introduction of the norm alters any patterns of interaction between individuals and thus re-designates the groups they belong to. If this is not the case, and the norm merely (re)formulates an already accepted understanding of what constitutes a violation of the principles that it seeks to defend, we can refer to the norm as universal. There are a number of indicators suggesting that nuclear safety should be classified in this category and they all relate to the fact that all humans are equally vulnerable to radiation. This premise makes it very difficult to argue that the norm realigns the balance between violators and victims. In fact, all humans are potential victims of a radiological emergency and the nuclear safety norm thus merely codifies a reality that is easily comprehensible to all affected.

Numerous efforts to coordinate national accident-prevention measures and facilitate early response cooperation have been launched with the understanding that a nuclear accident will harm everyone it reaches, irrespective of state borders.<sup>187</sup> This will be the case whether or not unified measures enforcing the nuclear safety norm are in place. Yet, if the goal is to prevent

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<sup>186</sup> Of 71 IAEA members 65 had signed the Convention. The only country to accompany its ratification of the Convention with a reservation was Ukraine, pointing out its inability to muster the necessary resources to properly address the current lack of technology for dealing with the unique challenges presented by the destroyed Chernobyl reactor on its own. This objection, however, concerns the resources available to Ukraine, not its commitment to upholding the safety standards.

<sup>187</sup> IAEA Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, ECURIE (European Community Urgent Radiological Information Exchange), EURDEP (EUropean Radiological Data Exchange Platform), ENSEMBLE (addresses the problem of achieving a common coherent strategy across European national emergency management when national long-range dispersion forecasts differ from one another during an accidental atmospheric release of radioactive material).

such accidents altogether and mitigate their consequences, should they occur, a set of basic standards can go a long way in providing the practical implementation of the norm-driven demand that everyone be safe from nuclear radiation. The oldest among the calls for such standards is the EURATOM treaty, whose Article 30 mandates “the protection of the health of workers and the general public against the dangers arising from ionizing radiations.”<sup>188</sup> On the most recent end of EU-wide measures on nuclear safety, the Council Directive on Nuclear Safety relates such standards to the need for active cooperation, especially in anticipation of the Eastern European candidates joining the Union and adding their Soviet-made reactors to the mix. This reasoning parallels the solidarity expressed in the financial and expert support offered to candidate countries in order to facilitate the closure of most risky reactors:

In order to avoid risks to human health and to the environment it is necessary to guarantee, at Community level, that financial resources will be available for the completion of decommissioning work in conformity with safety standards.<sup>189</sup>

The emphasis on nuclear safety as the key to protecting the general population from the risks associated with nuclear installations gains an additional dimension if we consider the long-term impact of the nuclear waste that is generated in the course of a nuclear plant’s lifetime. The European public is acutely aware of this pressing problem, listing it as the main reason for any opposition to nuclear power generation.<sup>190</sup> The urgency in addressing this issue is communicated

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<sup>188</sup> EURATOM Treaty.

<sup>189</sup> "Proposal for a Council (Euratom) Directive: Setting out Basic Obligations and General Principles on the Safety of Nuclear Installations," 3.

<sup>190</sup> According to a recent Eurobarometer survey inquiring specifically about citizen attitudes on the question of waste, 93% thought that "solution for high level radioactive waste should be developed now and not left for future generations" "Eurobarometer: Attitudes Towards Radioactive Waste," (European Commission, 2008), 24.

accurately by the explanatory memorandum offered along with the 2003 proposal for a nuclear waste directive:

Further delays in decisions on the development of repositories for the disposal of radioactive waste cannot be justified. On the contrary, there is a sound basis on ethical, environmental and nuclear safety grounds for the rapid development of these facilities. Any delays that could be interpreted as passing on to future generations the responsibility for disposing of our wastes should be avoided, especially since such delays, particularly in the case of the more hazardous wastes, may also increase the potential risk of accidents and terrorist attacks.<sup>191</sup>

In processing the nuclear safety norm at both the European and member-state level the tendency is not to search for exceptions that would exempt norm violations from being punished and prevented. On the contrary, the nuclear safety norm is used to extend the applicable protection to future generations, in addition to keeping current risk to European population at a minimum. It can therefore rightly be described as universal, not in the least because its applicability reaches so far into the future.

The above illustration of the broad commitment to safety by both governments and European institutions, along with the still unresolved question regarding long-term disposal of radioactive waste, might lead to the conclusion that the only way to operate nuclear power plants safely is to do away with them altogether. Some member states, as well as numerous advocacy groups and a considerable fraction of the European public do, in fact, take this position. However, a simultaneous commitment to curbing greenhouse emissions and apprehension about excessive dependence on foreign fuel imports makes the phasing out of nuclear power

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<sup>191</sup>"Proposal for a Council (Euratom) Directive on the Management of Spent Nuclear Fuel and Radioactive Waste," (Commission of the European Communities, 2003), 31.



increasingly impracticable. The answer that regulatory agencies have come up with, short of closing down all nuclear installations, has been to accurately assess the risk associated with their operation and develop safety measures that bring it down to a minimum. This has been the main practical shift in both operating and regulating nuclear power plants since the Chernobyl disaster and has come to be referred to as the ALARA rule. In implementing Article 6 of the Convention:

Each Member State shall ensure that, in the context of optimisation, all exposures shall be kept *as low as reasonably achievable*, economic and social factors being taken into account.<sup>192</sup>

This stipulation may be interpreted as opening up a can of worms, in that it allows economic and social factors to interfere with nuclear safety, possibly compromising it. In general, this has not been the case and the ALARA principle continues to define safety as the core priority. Although seemingly vague in their formulation, the objectives of the IAEA Convention on Nuclear Safety cited above are associated with a detailed process of technology audits and organizational reviews intended to make existing nuclear installations as safe as possible. Or, in the language of the convention:

All *reasonably practicable* improvements are made as a matter of urgency to upgrade the safety of the nuclear installation. If such upgrading cannot be achieved, plans should be implemented to shut down the nuclear installation as soon as practically possible.<sup>193</sup>

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<sup>192</sup> Italics added. "Report on the Implementation of the Obligations of the Convention on Nuclear Safety ", (Commission of the European Communities, 2001), 8.

<sup>193</sup> Italics added. Article 6, IAEA, "Convention on Nuclear Safety."

In other words, sometimes the necessary safety may come at too high a price and in such instances the political support for a plant's operation has to give way to economic imperatives. As far as the ALARA principle goes, safety is not part of the trade-off, confirming our classification of the norm as universal.

Besides providing the notion of nuclear safety with a degree of tangibility, the ALARA principle also offers a suitable transition to the discussion of the third measure on which we can classify a norm as universal or particular. Namely, is the norm considered legitimate prior to entering a new context, or does it have to defend its validity in competition with locally established norms? When the G7 Munich summit determined in 1992 that an entire generation of nuclear reactors operating in Eastern Europe had to be decommissioned, it effectively brought to the fore the delicate balance between nuclear safety and the cost-efficiency of maintaining it. Arguably, an external standard was being imposed on plant operators who ran sites with no containment shield separating the reactors from the outside environment. Although the reactors themselves were functioning properly according to their design, in light of the Chernobyl accident the design itself was no longer suitable. Did the G7 introduce a standard that was foreign to Eastern Europeans and as such had the potential to be deemed illegitimate? Or were more complex dynamics under way and the requested closure of the plant could, in fact, be accepted by the affected governments and societies?

In the early 1990s, the memory of the Chernobyl disaster was still very fresh and there was no shortage of anti-nuclear sentiment among Eastern European citizens. Most notoriously, Lithuania, hurt by the need to close down the Chernobyl-type plants more than any other country, had seen the anti-nuclear and more broadly environmental movement play a significant

role in earning its independence from the Soviet Union.<sup>194</sup> Thus, rather than drawing a sharp line behind the past of runaway nuclear risks, the proposal to close down the Ignalina plant had the potential to hit a sensitive nerve with the Lithuanian public. As chapter 7 will illustrate further, however, a more complex set of factors influenced those societal attitudes further down the road. At the time the decision to close down Lithuania's plant was taken, the nuclear safety norm in its (re)formulation from Munich had the door open.

In line the with the ALARA principle, the question of operating costs and upgrade expenses became highly salient in the wake of the G7 Munich meeting, especially to governments negatively affected by the summit's declaration. The reduced energy demand associated with post- communist transition offered only partial and temporary relief for the cuts in energy production that would accompany the closure on the non-compliant plants. The nuclear safety norm, revised in response to the failures that led to the Chernobyl accident, reflected principles that these governments subscribed to, as far as wanting to prevent a similar catastrophe from occurring in the future. The updating of nuclear safety standards did not come merely at the whim of the G7 governments but coincided with the revised consensus regarding intolerable risk associated with nuclear installations.

Yet, as "reasonable" levels of safety had increased dramatically, so did the costs of maintaining and/or upgrading an exceptionally risky plant. Eastern European governments, responsible for guaranteeing nuclear safety on the one hand and stable energy supply to their economies on the other, would have been faced with an insurmountable dilemma, had they not received support in the form of decommissioning assistance. The nuclear sector in the West has been sensitive to the possibility that a "further major incident involving a nuclear power plant in

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<sup>194</sup> Jane I. Dawson, *Eco-Nationalism: Anti-Nuclear Activism and National Identity in Russia, Lithuania, and Ukraine*. (Durham and London: Duke University Press, 1996).

an Eastern country would undermine the nuclear power sector in EU Member States” and encouraged expert and financial assistance to support the necessary retro-fitting and/or decommissioning projects in candidate countries and former Soviet Union.<sup>195</sup> With this aid, the closure of the newly unsafe plants was no longer the sole burden of the countries in whose territory they were located. Although there was still little enthusiasm regarding the decommissioning effort, abandoning the plants was generally consistent with the broader objective of European integration and even presented the concerned governments with an opportunity to demonstrate their commitment on this front. Given that there was no competing norm that Eastern Europeans could deploy in opposition to the nuclear safety norm, reaffirmed in the course of EU enlargement, any legitimacy-related tensions were reduced to a minimum and allow us to classify the norm as universal in the present framework.

The fourth aspect of norm content that determines the universal or particular nature of an international norm concerns the degree of variation in local approaches to its implementation. More specifically, are these circumscribed by domestic material conditions or do the standards associated with the norm flow directly from the international agreements that codify them? Where does the pressure to enact the norm in daily practice concentrate? The answers to these questions are relatively straightforward in the context of nuclear safety given the highly technical nature of the issues that it governs. Public knowledge about the details of nuclear reactor science aside, individual societies can contribute little to the enhancement of nuclear power plants in their vicinity. Any grass-roots efforts can only point to suspected violations of the norm or persistent intransparency that prevents reliable assessment of the safety situation. The targets of such bottom up measures are centralized agencies associated with the government or the

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<sup>195</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," (Brussels: Commission of the European Communities, 1993), 6.

independent nuclear safety regulators, suggesting that their activities are key to proper implementation of the norm. More importantly, however, to the extent that the anti-nuclear protests take place, they indicate public support for all measures enhancing nuclear safety. This is also repeatedly demonstrated in public opinion surveys on the subject. Thus, the local material realities do not seem to generate an alternative understanding of nuclear safety that would interfere with its widespread implementation.

The empirical indicator focusing on the centralized process of norm adoption is a reliable measure of whether a norm is particular to one society or if it possesses more universal qualities. With respect to the nuclear safety norm, however, the issue of centralization has a flip side as well, especially if we consider that the central planning in formerly communist countries interfered with the development of independent regulatory authorities.<sup>196</sup> The hierarchies that were in place at the time of Chernobyl obstructed effective dissemination of information about events that both preceded and followed the accident. Instead, the question of centralization should be equated with norm enforcement that is even-handed, technically strong, and well-resourced, in order to perform the functions guaranteeing safe operation of nuclear installations adequately. It is the uniformity in the nature of the norm across implementation contexts that distinguishes a universal norm from its particular counterparts.

Enhancing regulatory regimes was one of the urgent actions identified at the G7 summit as necessary for avoiding future accidents.<sup>197</sup> In addition, a minimum legal framework guaranteeing the independence of nuclear safety regulators along with sufficient staffing and budgetary provisions were cited as the conditions of making any grant assistance flowing to

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<sup>196</sup> Ibid., 9.

<sup>197</sup> See *ibid.*, 14.

Eastern Europe meaningful.<sup>198</sup> By late 1990s, some progress had been noted on this front when a Commission communication on the status of nuclear safety in the post-communist region recognized “a general acceptance of the need for independent regulation of safety and in the longer term this is a development potentially much more far-reaching than any individual success in reforming procedures.”<sup>199</sup>

The implementation of the nuclear safety rules does not mean that all procedures have to be identical across countries.<sup>200</sup> The content of the norm is unaffected by minor variations in organizational structures, as long as the principle of independence is maintained and coordination between national-level agencies possible.<sup>201</sup> The regulatory, technological, engineering and industrial environment may vary from country to country.<sup>202</sup> Yet, member states responsible for setting safety standards and licensing nuclear installations “share the collective responsibility towards all European citizens for ensuring nuclear safety.”<sup>203</sup> Reflecting this obligation, the final wording of the Council Directive on Nuclear Safety incorporated the

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<sup>198</sup> *ibid.*, 28.

<sup>199</sup> Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge and New York: Cambridge University Press, 1998), 5.

<sup>200</sup> In order to monitor the safety level of nuclear installations, Safety Performance Indicators (hereinafter: SPIs) play an important role. A variety of different systems are used world-wide by nuclear regulators and operators. Defining Safety Performance Indicators is not an easy task and therefore the country-specific methods vary significantly. Many countries have their own programs and methods of SPIs, which are often developed by operators of nuclear power plants themselves or by regulators. There might be also requests from the public to get information about the safety level of the installations. "Report on the Implementation of the Obligations of the Convention on Nuclear Safety: 4th Review Meeting ", 38.

<sup>201</sup> Independent regulatory authorities have been strengthened through EU technical and financial assistance and their closer involvement with EU regulators in a number of forums. These include the CONCERT Group which involves regulators from the EU, NIS and the candidate countries and the Nuclear Regulators Working Group (NRWG) that is open to regulators from Member States and the candidate countries. (EC Comm, 2000, 4) At technical level, the Western Europe Nuclear Regulators Association (WENRA) is contributing significantly to the harmonization efforts by establishing "safety reference levels", 88% of which have already been implemented. Building on the existing work and bringing it within the Community framework would add value to the national approaches. "Nuclear Illustrative Programme: Presented under Article 40 of the Eurotam Treaty for the Opinion of the European Economic and Social Committee," (Commission of the European Communities, 2007), 21.

<sup>202</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," 1.

<sup>203</sup> "Communication from the Commission on the Nuclear Industries in the European Union," 31.

amendment made by the European Parliament regarding non-interference in regulatory activities from interested parties.

Member States shall ensure that the competent regulatory authority is functionally separate from any other body or organisation concerned with the promotion, or utilisation of nuclear energy, including electricity production, in order to ensure effective independence from undue influence in its regulatory decision making.<sup>204</sup>

Without calling the process of nuclear safety norm implementation centralized, it can nevertheless be described as concentrated, with the dual objective of independence and coordination. Both these factors were found to be missing prior to the Chernobyl disaster and the attempts to remedy this failure have guided subsequent steps in nuclear safety standards development and promotion. One additional consequence follows from the limited differentiation between countries when it comes to nuclear safety regulation. Since the plant regulation and licensing occurs according to well-specified standards and procedures, it also leaves little room for crafting of locally-anchored counterarguments to the globally accepted norm. In other words, the assessment of safety is reactor-specific not country-specific. The concrete safety problems with individual plants, therefore, can be evaluated on grounds that are relatively isolated from the local context and although the consequences of reactor closure affect each country differently, the principle underlying such a decision is acceptable to all. This, along with the generally valid practice of regulator independence, provides sufficient reasons for

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<sup>204</sup> Article 5, "Council Directive 2009/71/Euratom of 25 June 2009 Establishing a Community Framework for the Nuclear Safety of Nuclear Installations." Also see "European Parliament Legislative Resolution of 22 April 2009 on the Proposal for a Council Directive (Euratom) Setting up a Community Framework for Nuclear Safety ", (Brussels: Official Journal of the EU, 2010).

characterizing the nuclear safety norm as universal according to the local-constraints criterion, too.

The final attribute that can help us establish whether a norm should be described as particular or universal follows from the strategies adopted by non-governmental organizations involved in the promotion of that norm. The examination of this issue with regard to the nuclear safety norm is complicated by the fact that the most prominent groups involved in promoting nuclear safety equate the solution with abandonment of nuclear power altogether. As such, their activities do not mirror the content of the norm exactly. They can, however, be interpreted as the strictest application of the probabilistic and deterministic measures for assessing the risk associated with nuclear power generation. In other words, the criteria for judging nuclear power, from the perspective of safety, are not significantly different; it is just that the threshold at which they find the risks intolerable is much lower. This preserves the option for the researcher to examine their mission and strategies as defending the nuclear safety norm, even though they themselves regard their work as anti-nuclear.

Let us consider two groups represented most prominently at both the European and the national levels: Greenpeace and Friends of the Earth. Following the original classificatory framework outlined in previous chapters, the core empirical questions that we need to answer is the degree to which the NGOs involved in anti-nuclear campaigns are attuned to local particularities or whether they can share their strategies across different contexts easily. A simultaneous look at the activities by Greenpeace International, Greenpeace Europe and the national branches of this organization reveals a considerable overlap in both the stated mission with regard to nuclear energy and the activities chosen to advance it. The primary focus is on preventing a relapse into complacency on the part of governments and the public with regard to



the risks of nuclear power generation, especially as the memory of the Chernobyl disaster wanes and energy security pressures mount:

It seems that global governments are suffering from mass amnesia and are doing a good job of spreading it around. The reality of nuclear power is no different now than it was in the 20th Century - it is inherently dangerous... Safe reactors are a myth. An accident can occur in any nuclear reactor, causing the release of large quantities of deadly radiation into the environment... In addition to the risk of accident, nuclear plants are highly vulnerable to deliberate acts of sabotage and terrorist attack.<sup>205</sup>

This mission is echoed in the activities of both national and regional Greenpeace offices, each of them targeting their “corresponding” authority – either national governments<sup>206</sup> or European institutions (the Commission and the Parliament, especially).<sup>207</sup> Similar “division of labor” accompanies activities by Friends of the Earth.<sup>208</sup> There is a pattern of concentrating efforts on appeals to legislative changes and long-term policy building, which distinguishes the nuclear safety issue from other areas of concern to these environmental organizations. Whereas agricultural erosion prevention, recycling education, food safety, or landfill-related protests are best carried out at the grass-roots level, the anti-nuclear mission is achieved through lobbying of governments, along with more general education of the public.

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<sup>205</sup> Matthew Gorton, Philip Lowe, and Anett Zellei, "Pre-Accession Europeanisation: The Strategic Realignment of the Environmental Policy Systems of Lithuania, Poland and Slovakia Towards Agricultural Pollution in Preparation for EU Membership," *Sociologia Ruralis* 45, no. 3 (2005).

<sup>206</sup> "Greenpeace Calls for an Amendment to the Atomic Law [Greenpeace Vyzývá K Přijetí Novely Atomového Zákona]," Greenpeace Czech Republic, <http://www.greenpeace.org/czech/media/press-release/greenpeace-vyz-va-k-p-ijet-no>.

<sup>207</sup> "Greenpeace Briefs Energy Commissioner on Safety Concerns Ahead of Finnish Nuclear Plant Visit," Greenpeace Europe, <http://www.greenpeace.org/eu-unit/press-centre/press-releases2/Olkiluoto-070601>.

<sup>208</sup> "Safe Energy for Europe," Friends of the Earth, <http://www.foeeurope.org/activities/Nuclear/>.

Nor are these activities, ranging in creativity and riskiness from colorful street marches<sup>209</sup> to scaling of NPP cooling towers,<sup>210</sup> carried out in isolation from the mission of other organizations with a similar goal. Friends of the Earth – Europe actively builds networks with other organizations committed to promoting transparency in presenting the risks associated with nuclear power generation.<sup>211</sup> There appears to be little concern with regard to “staying on message” and the activities of one organization seem to reinforce those of its network partners. The consensus derives from the principles of vulnerability to radiation, past disastrous accidents, and perceived intransparency of the nuclear sector and its regulation – all of these providing the rationale also for the nuclear safety norm more broadly. In other words, the content of the norm itself allows environmental organizations concerned with the impact of nuclear risks to focus not on painstakingly translating some obscure message to societies and governments but taking direct action and seeking tangible change. In this way, the universal quality of the nuclear safety norm facilitates their work and assures certain level of resonance among the public, which, as the Eurobarometer surveys document, continues to view nuclear power with unease and skepticism.

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<sup>209</sup> Gediminas Kirkilas, "Speech by the Prime Minister of the Republic of Lithuania H. E. Mr. Gediminas Kirkilas, European Nuclear Energy Forum," (Prague2008).

<sup>210</sup> "Activists from Greenpeace 80 Metres up a 100-Metre High Crane at the Construction Site of Olkiluoto-3, Finland's Fifth Nuclear Reactor.," Greenpeace Europe, <http://www.greenpeace.org/eu-unit/press-centre/photosvideo/six-activists-from-greenpeace>.

<sup>211</sup> Its partnership with Greenpeace is indispensable in these efforts. A closer look at the state of nuclear safety in Europe's individual regions is provided not only by local FoE chapters but also its network partners, e.g. CEE Bankwatch focusing on nuclear power plants in new EU member states.

### *Constitutive or Regulative?*

Characterizing a norm as constitutive requires that it provide normative content to a collective identity, allowing other actors to recognize this identity.<sup>212</sup> The process of EU enlargement offered numerous opportunities for viewing the normative changes introduced to candidate countries as defining moments for the idea of EU membership. Was nuclear safety one of the norms that were presented as constitutive of the new European identity? Evidence laid out in the previous section suggests that the norm evolved at best in parallel with international standards on the subject. In fact, its EU version often lagged behind the IAEA measures, as a consequence of the lacking consensus among EU member states regarding nuclear operations. The distribution of competences concerning the norm's enforcement among European institutions was also less than clear until very recently. Most direct clues regarding the effect that the nuclear safety norm was expected to have on states can be gleaned from the accession negotiations and the rationale behind the decommissioning of certain reactors mandated by the relevant protocols accompanying the Accession Treaty.<sup>213</sup>

The divisions and competence feuds between the Commission and the member states have obscured the norm's evolutions to a degree. Efforts to present nuclear safety norm in Europe-wide terms have been only partly successful, most notably in connection to the funding available to governments faced with mandatory decommissioning or safety upgrades of their plants. Some of the funding has been offered in solidarity with these EU members-to-be, who found themselves without sufficient decommissioning reserves for NPPs built under central

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<sup>212</sup> Rawi Abdelal et al., eds., *Measuring Identity: A Guide for Social Scientists* (New York: Cambridge University Press, 2009), 20.

<sup>213</sup> Protocols, also see: "Agenda 2000: For a Stronger and Wider Union," (Brussels: European Commission, 1997), 49-50.

planning systems or by the Soviet Union (this issue was most pressing in the case in Lithuania).<sup>214</sup> At the same time, however, the expectation was that the funding was meant to at most supplement the finances raised by the affected governments themselves.<sup>215</sup> Or, as a 1993 EC Communication put it: “guided by the principle of help for self-help.”<sup>216</sup> Moreover, for the definition of nuclear safety as a constitutive or a regulative norm it matters that funding was also made available for safety upgrades and on-site projects outside the EU. In Russia and other post-Soviet Republics the principle of solidarity gave way to imperatives of necessity. That necessity, in turn, followed from the technical safety standards developed under the auspices of the IAEA. Finally, the projects funded by the EU were viewed as contributing to a greater body of knowledge regarding reactor safety, making the financing beneficial not only to the recipients, but to “all involved parties for the purpose of improving safety at other installations.”<sup>217</sup>

The references justifying the closure of the reactors most frequently include the 1992 G7 summit in Munich.<sup>218</sup> The conclusions of that meeting were presented as a standard independent of the process of accession, which the enlargement officials were merely overseeing, not

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<sup>214</sup> Commission, "Proposal for a Council Regulation on the Implementation of Protocol No 9 on the Bohunice V1 Nuclear Power Plant in Slovakia, as Annexed to the Act Concerning the Conditions of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia," (Brussels: Commission of the European Communities, 2004); Commission, "Proposal for a Council Regulation on the Implementation of Protocol No 4 on the Ignalina Nuclear Power Plant in Lithuania, as Annexed to the Act Concerning the Conditions of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia; 'Ignalina Programme' " (Brussels: Commission of the European Communities, 2004); "Council Regulation (Euratom) No 549/2007 of 14 May 2007 on the Implementation of Protocol No 9 on Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant in Slovakia to the Act Concerning the Conditions of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia," (Brussels: Official Journal of the EU, 2007).

<sup>215</sup> “While international and EU efforts cannot substitute for the efforts of the countries themselves, the EU can help its partners as they face these challenges and work to ensure that nuclear safety continues to receive high priority. The Commission will continue to work to build a supportive economic and legal environment in these countries in which operators and regulators can fulfill their different responsibilities. (EC 2000 communication, 17)

<sup>216</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," 28.

<sup>217</sup> Ibid., 33.

<sup>218</sup> Klaudijus Maniokas and Ramunas Stanionis, "Negotiations on Decommissioning Ignalina Nuclear Power Plant," in *Unification of Europe and Lithuania's EU Accession Negotiation*, ed. Klaudijus Maniokas, Ramunas Vilpišauskas, and Darius Žeruolis (Vilnius: Eugrimas, 2005), 300.

creating. In other words, formal association of the nuclear safety norm with the EU-wide agenda *followed* the membership talks with East European candidates, instead of influencing them directly. Furthermore, the competence of the European Commission in the field of nuclear safety was disputed until a favorable 2002 ruling by the European Court of Justice granted community jurisdiction in this area under the EURATOM treaty. Up to that point, member states claimed exclusive control of nuclear safety questions (as distinct from radiation protection) and the revised declaration of competences was not deposited with the IAEA directorate until 11 May 2004. The continued contestation regarding the level of control that member states were willing to give up on nuclear safety regulation is illustrated by the rejection of an Annex to the Council Directive on Nuclear Safety proposed by the European Parliament. This expansion of the Directive would have added some distinguishing content to the new legislation, had its call for a “defense-in-depth” principle been accepted.<sup>219</sup> As a result, and despite the legislative nature of the progress towards EU-level control of nuclear safety, the community-wide participation in the Convention review cycles parallels the periodic reviews submitted by individual member states, rather than replacing them. We must also note that countries outside of the European Union are subject to the IAEA standards and complying with them, making any arguments about the exclusive European content of the nuclear safety norm even less plausible.

Thus, nuclear safety does not possess the characteristics expected of a norm that defines a narrower state identity, which would be recognizable by those inside and outside the implied society of states. A widely expected explanation of the legislative boom within the EU prior to its Eastern enlargement as an effort to secure the principles enshrining a collective identity, as

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<sup>219</sup> “The application of the defence in depth concept shall ensure that no single technical, human or organisational failure could lead to harmful effects, and that the combinations of failures that could give rise to significant harmful effects are of very low probability.” "European Parliament Legislative Resolution of 22 April 2009 on the Proposal for a Council Directive (Euratom) Setting up a Community Framework for Nuclear Safety ", 230.

was the case with the race equality directive, does not apply to the failed effort to conclude the nuclear safety directive before the new members entered the Union. This qualifies as a missing piece of evidence in favor of the norm's constitutive nature. Before finally settling for a classification of the norm as regulative, however, we can further examine the way it operates and influences state behavior to establish a more positive account of its regulative qualities.

Primarily, we need to focus on the measures of nuclear safety that determine whether or not NPPs within a government's jurisdiction comply with the norm's provisions. Implementation of the IAEA Convention combines the use of deterministic and probabilistic approaches to safety evaluation,<sup>220</sup> which provide a standardized approach towards assessing the performance and relative risk levels of individual reactors. The joint reliance on probabilistic and deterministic measures came in response to the failures diagnosed as leading to the Chernobyl disaster. This process of risk assessment generates the technical operating specifications, which "define the technical rules to be complied with during different stages of normal operation of the plant."<sup>221</sup> Along these lines, the widely applied ALARA principle complements design-based risk prevention to uncover safety deficiencies and provide corresponding corrective measures that are up-to-date with current best practices and most recent research findings. In other words, compliance with the nuclear safety norm amounts to compliance with these narrowly defined and periodically updated safety guidelines.

At its core, the nuclear safety norm is highly technical and although association between the principles it encompasses and a unique definition of EU membership is not inconceivable (judging from a variety of environmental norms now seen as such), it has not been developed

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<sup>220</sup> The probabilistic studies include: reliability analyses, consistency of overall design, external hazards, feedback of operating data and risk analysis. Commission, "Communication of the Commission: Assurance of Safety of Nuclear Power Plants - Objectives and Methods," 10.

<sup>221</sup> Ibid., 15.

thus far. In its effect on member states, as well as those outside the Union, the purpose of nuclear safety is to regulate the operation of nuclear installations and provide guidance for independent authorities in supervising this process. The final conclusion regarding the norm's classification therefore has to place it on the regulative end of the spectrum. With this categorization comes the expectation that the primary source of opposition to the norm will come from governments, and more specifically, their agencies responsible for balancing the expected benefits of nuclear power against the cost of generating it safely and cheaply. This is consistent with the observations made in connection to the availability of external funding for expensive safety upgrades and irreversible shut-downs that were mandated in the course of the EU enlargement – without these funds the obstacles faced by the affected governments with regard to energy policy would have been insurmountable. Given the close relation between technical compliance and financial benefits of the enlargement process, however, the EU was able to induce cooperation from candidate countries most dramatically affected by the post-Chernobyl norm. One question that remains concerns the possibility of a shift towards a more identity-based understanding of nuclear safety that may ultimately lead to an improved process of consensus building inside EU's institutions, potentially expanding the maneuvering space for a future common energy policy.

## Thinking out of the Box

Now that minority rights and nuclear safety have been neatly tucked away in their respective boxes, it is time to point out the limits of the individual cells. This dissertation seeks to define and highlight the differences between particular and universal norms – the five-item checklist for detecting a norm’s attributes was formulated in the preceding chapter and applied in the current one. These criteria for studying norms, however, intentionally refrain from using norms’ real-life success as an indicator of where in the typology they should fall. Instead, norm success represents the dependent variable and the analytical space mapped in figure 3.1 is intended to help us make inferences about the main source of opposition that a norm will encounter.

**Figure 3.1**    **Minority Rights, Nuclear Safety and Expected Outcomes**

		Norm Content / Acceptability to Societies	
		Particular	Universal
Norm Effect on Governments	Regulative	<i>Anti-Corruption</i> (weak support from governments and societies)	<i>Nuclear Safety</i> (opposition from governments)
	Constitutive	<i>Minority Rights</i> (opposition from societies)	<i>Human Rights</i> (strong support from governments and societies)



Minority rights do not benefit from easy comprehensibility across borders because the principles they enshrine derive from highly contextualized patterns of interaction between diverse social groups. Things get lost in translation. Attempts at promoting the norm internationally are likely to run into societal opposition, stemming from the unfamiliarity with the original intent of the norm, which was tailored to govern interethnic relations elsewhere. The support of governments is critical for adoption and enforcement of norms. Yet, without their internalization, or every-day living-out of the norms by affected societies, the behavioral change required to call their promotion a success will be minimal. Only constitutive/universal norms can travel, although this is not to say that they always will. The purpose of this project is to raise our awareness of the potential obstacles in norm proliferation and to sort them theoretically. Whether the political arrangements at the domestic and international level permit a shift of the *particular* minority rights norm into the universal cell remains an empirical question (see chapter 5).

The nuclear safety is located in the *universal* half of the proposed typology already but the anticipated difficulties in securing government enforcement of the norm can hamper its broad success. In practical terms, this need not be a problem. Even if governments are not bound by membership in an identity-based grouping in connection to the nuclear safety norm, as long as they follow it as a technical rule (or a regulative norm) no damage is done. Should they violate the norm, justified anger on the part of their respective societies, as well as that of peer states and international organizations who may issue sanctions to punish the violation, would likely steer them into the “safe” camp. This may be why we rarely see government officials argue for cutting corners on NPP safety. Under the framework proposed here, however, it is possible to imagine a shift *away* from the universal formulation of the nuclear safety norm that captures also public support for doing so. What would be such conditions, how can the argument be made plausible,

and what implications does this have for nuclear safety internationally? As chapter 7 studying the effects of energy crises will show, these questions are not merely hypothetical and our ability to answer them under the present framework is valuable analytically, but also in policy terms.

## CHAPTER 4: MINORITY RIGHTS

The vigor with which EU's enlargement officials took up the question of minority rights prior to the 2004 expansion might lead us to believe that there was a widespread agreement about the most desirable means of handling this sensitive issue. Although the Copenhagen accession criteria of 1993 contained only general references to principles of democracy and human rights protection, external pressure on ethnically divided candidate countries was growing continuously.<sup>222</sup> European Union joined forces with regional watchdog organizations, the Council of Europe and the OSCE most prominently, and integration of minorities became an inherent part of the resulting conditionality arrangements. The ready-made solutions for minority inclusion that streamed to Eastern Europe from old EU member states seemed to encounter little questioning. In reality, the consensus did not reach too far beyond a vague wish not to repeat the tragedies caused by untamed ethnic tensions in the Balkans of the 1990s. Old and prospective EU members did see eye to eye on that but not much more.

The historically rooted complexity of ethnic relations in Eastern Europe found no match in the West and the claims made by minorities, as well as reactions by majority populations in the post-communist region, repeatedly surprised officials in Brussels. The routine of talking past each other began in the pre-accession period and as soon as representatives from the new member states took their seats in Brussels, the issue of misaligned perceptions of minority tensions entered the European Parliament (EP). The diverse vantage points from which East and West European EP representatives viewed the discussion has complicated the search for paths to non-discrimination and minority inclusion. The main divide emerged between EU's focus on individual rights and the Eastern European minorities' need to have their *collective* right to a

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<sup>222</sup> Križnerová, Najšlová, and Világi, *Odpoveď Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku [the Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia]*, 23-25.

distinct culture and identity protected. Partly to address this rift, the European Parliament created an intergroup on minorities. This move reflected the desire to unite the diverse positions on minorities. Unfortunately, the legal foundation on which EU's institutions stand seemed unable to accommodate the collective rights language and the divide separating the two perspectives remained. The intergroup's initial anti-discrimination effort focused on immigrant populations and was led by a British MEP,<sup>223</sup> Claude Moraes. From the opposite side, this narrow approach was countered by unceasing demands from MEPs defending the interests of the Hungarian minority across Eastern Europe. This brought the question of a new set of minorities – the national ones – to the agenda. As a result, the minority rights claims originating in new EU member states now sit rather uncomfortably *next to* the original calls for non-discrimination. They parallel each other, rather than being integrated into a unified approach.<sup>224</sup> The frustration with the lack of overlap between East and West European perspectives on minority rights is expressed well in the question I was asked by an exasperated, high-ranking official I interviewed at EP's secretariat: "What exactly is it that the Eastern European minorities want that our existing models of inclusion are unable to offer them?"<sup>225</sup>

The clumsy handling of minority rights on the part of the European Union had yet another dimension. Prior to the EU's 2004 enlargement, the European Parliament and the European Commission intended to spread democracy and stability to the post-communist region. But old EU members had not encountered many of the challenges present in the East European context and so they turned to other competent organizations for support. In the case of ethnic minority rights, the institution with the most developed toolkit to address the issue was the

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<sup>223</sup> Member of European Parliament

<sup>224</sup> Interview with Árpád Duka-Zolyómi, MEP, April 2, 2009, Brussels.

<sup>225</sup> Anonymous Interview 1, April 2009 Brussels.

Council of Europe.<sup>226</sup> Its expertise in addressing minority rights questions and the treaty-based instruments that it was continuously developing on the subject matched the objectives of EU's membership conditionality well. Thus, when the need came to specify the accession requirements to candidate countries facing ethnic tensions, the European Commission turned to its Strasbourg-based partner organization for guidance.

The seemingly sound "outsourcing" approach had one important flaw, however. Attuned to existing challenges, the Council of Europe approached the definition of minority rights standards with caution and pointed to lacking compliance in prospective *and* old EU member states alike. However, the European Commission chose to disregard these nuances and used its dominant position in the accession process to present these standards as a ready-made and non-negotiable solution to the candidates. In other words, EU's officials assumed that the norms advanced by the Council of Europe were readily acceptable to all target societies, despite the near-absence of feedback from the affected ethnic groups (minority and majority).<sup>227</sup> Meanwhile, even five years after the 1998 ratification of the Framework Convention on National Minorities, its creators at the Council of Europe referred to making the prescriptions "really universal and really binding for all member states" as something yet to be achieved.<sup>228</sup>

The divisions inside EU institutions regarding the approach to establishing valid minority protection guarantees, combined with the rushed adoption of external standards as a benchmark of improvement, have not helped in moving the issue forward. EU member states, however, do not have the luxury of postponing the response to increasing diversity of European societies.

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<sup>226</sup> Council of Europe, established in 1949, is an institution completely separate from the European Union. It operates from Strasbourg and has 47 member states, which is nearly double the membership of the EU. Most prominently it has been active in the realm of human rights, democratic standards, social cohesion, and education. Some of its programs are organized as a joint effort with the EU.

<sup>227</sup> The trend has continued into more recent communications with new candidates Snježana Bokulić and Galina Kostadinova, "Pushing for Change? South East Europe's Minorities in the EU Progress Reports," (London: Minority Rights Group International, 2008).

<sup>228</sup> Čilevičs, "The Framework Convention within the Context of the Council of Europe," 32.

Following the recent enlargement, ten percent of EU's population claims the status of a minority.<sup>229</sup> This includes immigrant populations, as well as ethnic and national groups. The proportion of the former is greater in the old member states, while the latter are more numerous in the East. Yet, the present distribution of minorities is likely to change over time and open dialogue at all levels, including the EU-wide arena, will be necessary. As the new members develop economically they will become attractive to migrant workers. Meanwhile, existing ethnic groupings in the West may gain inspiration from their East European counterparts to become more vocal at the EU level and add their grievances to the mix of minority challenges. Understanding the current split between the old and new member states, therefore, amounts to gaining knowledge about the multifarious sources of inter-group tensions that will likely populate European politics in the near future.

This chapter will focus on analyzing minority rights in detail, outlining the various versions of this norm and their interaction in the EU policy space. It draws on fieldwork conducted in Slovakia and Lithuania to test the hypotheses that follow from the norm's location in the typology. Before I delve into the presentation of the two cases, one final note is necessary. I will refer to the EU version of the minority rights norm as a benchmark for assessing the measures adopted by Slovakia and Lithuania. Although this dissertation takes the position that the Western solutions were not always adequate for the challenges faced by Eastern European minorities, the EU institutional and policy space has nevertheless represented a significant constraint on the behavior of both states and non-state actors. However imperfect, the accession standards became a measure of success in the realm of minority inclusion - by seeking to join the EU, candidates deferred to the West European understanding of the norm and the broader goal of wanting to "return to Europe" made this imperative. Up to the point of entry, meeting EU

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<sup>229</sup> EP 393.272 – 2007, p.1

requirements was the only game in town. Centering the analysis around the membership aspirations also offers a unified language that allows us to analyze the diverse experiences from Slovakia and Lithuania, side by side.<sup>230</sup>

Slovakia was the most notorious laggard in securing improvements in the status of its minorities prior to EU accession.<sup>231</sup> Lithuania, by contrast, fared much better in securing rights guarantees for its minorities and it earned praise for doing so. As early as 1997, Vilnius hosted a Council of Europe conference on the minority question, as the Eastern European capital with the most impressive record on this front. In the same round of review in which Slovakia was openly scorned for its anti-minority policies, Lithuania's minority rights protection situation was described as "favorable."<sup>232</sup> This verdict was echoed by subsequent reports: "the two main minority communities in Lithuania (Polish and Russian) have well established rights (schools, language, etc.)."<sup>233</sup> While subject to regular scrutiny by EU's enlargement officials, the country was not exposed to direct pressure to revisit its earlier solutions to the minority question. Instead, it served as a positive example for many countries in the region.<sup>234</sup> The variation in the performance of the two countries represents the core puzzle tackled by this chapter. It is even

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<sup>230</sup> At the same time, the need for protecting minorities did not cease with EU accession. Acknowledging this continuity, an additional measure of success on minority inclusion, and by extension also of the degree to which this process was impeded by societal resistance, will focus on real advances towards equality in the treatment of ethnic groups after 2004.

<sup>231</sup> Zsuzsa Csergo, *Talk of the Nation: Language and Conflict in Romania and Slovakia* (Ithaca: Cornell University Press, 2007)., Zsuzsa Csergo and James M. Goldgeier, "Nationalist Strategies and European Integration," *Perspectives on Politics* 2, no. 1 (2004)., Kevin Deegan-Krause, "Uniting the Enemy: Politics and the Convergence of Nationalisms in Slovakia," *East European Politics and Societies* 18, no. 4 (2004)., Ondrej Dostál, "National Minorities," in *Slovakia 2005: A Global Report on the State of the Society*, ed. Martin Bútora, Miroslav Kollár, and Grigorij Mesežnikov (Bratislava: Institute for Public Affairs, 2006)., Ivo Samson, "Slovakia: Misreading the Western Message," in *Democratic Consolidation in Eastern Europe*, ed. Jan Zielonka and Alex Pravda (Oxford: Oxford University Press, 2001).,

<sup>232</sup> "Agenda 2000 - Opinion on Lithuania," (European Commission, 1997).

<sup>233</sup> "Regular Report: Lithuania," (European Commission, 1998). For a confirmation of the sustained guarantees of ethnic minority rights see "Memorandum to the Lithuanian Government: Assessment of the Progress Made in Implementing the 2004 Recommendations of the Council of Europe Commissioner for Human Rights," (Strasbourg: Council of Europe, 2007). Notably, the report leaves out a mention of the tiny but socially and politically excluded Roma minority.

<sup>234</sup> Interview with Tadas Leoncikas

more striking, if we consider the similarity between the two cases on variables known to affect the likelihood of interethnic tensions and the quality of responses to these.

First, Slovakia and Lithuania are both small post-communist states that had recently gained independence from federations in which their membership had been less than voluntary. In addition, their minority demographics are roughly similar, in that the largest majority comprises around 10% of total population (Poles in Lithuania and Hungarians in Slovakia), with another slightly smaller, but sizeable, minority also vying for recognition and inclusion (Russian-speakers and the Roma, respectively).<sup>235</sup> The structural constraints on options available to remedy the minority-majority tensions are thus comparable and also represent the main reason for not including the other Baltic States in the comparison.<sup>236</sup> Finally, foreign policy objectives of both countries during the post-communist period have been dominated by the desire to join the European Union, in large part to assert their “European” identity. This *similarity* on measures seen as determining positive minority-majority interaction in existing literature, makes the *differential* performance of Lithuania and Slovakia in meeting the minority protection standards that much more surprising. The comparison therefore promises to uncover the source of the difference between the two cases and shed light on obstacles to the proliferation of the minority rights norm.

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<sup>235</sup> For Lithuania, the numbers published in the 2001 census were 6.74% for the Polish minority and 6.31% for Russian ethnicity. For Slovakia a 2001 census showed 9.7% belonging to the Hungarian minority and 1.7% declared themselves as Roma, although the size of the latter minority group is believed to be vastly underestimated.

<sup>236</sup> The proportion of Russian speakers in Latvia and Estonia is much larger. David D. Laitin, *Identity in Formation: The Russian-Speaking Populations in the near Abroad* (Ithaca and London: Cornell University Press, 1998)., Thomas Lane, "Lithuania: Stepping Westward," in *The Baltic States: Estonia, Latvia and Lithuania*, ed. David J. Smith, et al. (London, New York: Routledge, 2002)., James Hughes, "'Exit' in Deeply Divided Societies: Regimes of Discrimination in Estonia and Latvia and the Potential for Russophone Migration," *Journal of Common Market Studies* 43, no. 4 (2005)..



## Methodology

Building on the classification of the minority rights norm as particular and constitutive, the next step is to examine societal responses to changing minority rights standards for clues about the varying success of the norm. Based on its position in the typology, we should expect the societal attitudes to be the main determinant of norm success. In other words, if opposition to the minority rights norm arises, it is likely to occur at the level of everyday social interactions rather than through lacking official steps in updating relevant legislation. This nature of the norm magnifies the importance of expectations about the behavior of others when formulating one's attitude towards minorities. As a result, the methodological focus needs to be on uncovering collectively held beliefs about minority rights.

I employ Q-methodology, which combines the benefits of survey techniques and statistical factor analysis, but also leaves enough room for the interpretive element needed to properly analyze political discourse.<sup>237</sup> It delimits the realm of the possible and so circumscribes the qualitative assessment of the two cases. The overall purpose of this approach is to examine the full range of opinions about minority rights (not just the most prevalent few), in order to evaluate the likelihood of improvement in the status of minorities, as well as to explain the absence of such change. In studies using this methodology, participants arrange statements in a quasi-normal distribution and because there are limited slots for each extreme position (see Figure 4.1), their responses to individual survey items are interdependent. This procedure gives

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<sup>237</sup> Steven R. Brown, *Political Subjectivity: Applications of Q Methodology in Political Science* (New Haven: Yale University Press, 1980); Steven R. Brown, "Q Technique, Method, and Methodology: Comments on Stentor Danielson's Article," *Field Methods* 21, no. 3 (2009); Stentor Danielson, "Q Method and Surveys: Three Ways to Combine Q and R," *Field Methods* 21, no. 3 (2009); John S. Dryzek and Leslie T. Holmes, *Post-Communist Democratization: Political Discourses across Thirteen Countries* (New York: Cambridge University Press, 2002); Bruce McKeown and Dan Thomas, *Q Methodology* (Newbury Park, CA: Sage Publications, 1988); Thomas Webler, Stentor Danielson, and Seth Tuler, "Using Q Method to Reveal Social Perspectives in Environmental Research," (Greenfield, MA: Social and Environmental Research Institute, 2009).

the respondent to “construct a picture of his or her own viewpoint and to interpret each statement in his or her own way.”<sup>238</sup> This interpretation translates into the final arrangement, a Q-sort, that relates all statements to one another. Individual-level data offered by traditional surveys is not sufficient to capture the full context surrounding inter-ethnic relations and using Q-method we can glean additional insights from an assessment of discursive positions about the situation of minorities in a given society.<sup>239</sup>

I spent several weeks in the Slovak national library reading through articles and books that were identified by a comprehensive search of the library’s database on the subject. The time period I focused on was between 1998, when the electoral shift away from outright nationalist and authoritarian tendencies took place, up to 2008. In Lithuania, I hired a research assistant to conduct an identical search of all relevant media from the post-independence period (1991 onward). The selection of print media included dailies and other periodicals from across the political spectrum, publications issued by ethnic minority organizations, as well as regular reports by think-tanks and research centers studying minority rights. Relevant academic journals, official state documents (e.g. the Constitution) and parliamentary declarations were also included. This process of reading through hundreds of articles yielded 107 unique statements in Slovakia, 114 in Lithuania. These statements were subsequently coded according to the matrix employed by Dryzek and Holmes,<sup>240</sup> combining key elements of political discourse and the types of claims made in arguments. The following table shows the final statement counts in each cell for Slovakia and Lithuania.

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<sup>238</sup> Danielson, "Q Method and Surveys: Three Ways to Combine Q and R," 221.

<sup>239</sup> Importantly-methodology does not detract from the utility of traditional (R-method) surveys. On the contrary it can be used productively in combination with these. My study applies the less conventional method first because it answers more accurately the questions raised by the proposed theory. The results of the study could, however, be used in developing targeted survey questions that would enable applying the Q-methodology findings (which focus on capturing the entirety of the underlying discourse, not detecting representative patterns) to a larger population.

<sup>240</sup> Dryzek and Holmes, *Post-Communist Democratization: Political Discourses across Thirteen Countries*.

**Table 4.1 Statement coding matrix**

Type of Claim		Discourse element							
		Ontology		Agency		Motives		Relationships	
		SK	LT	SK	LT	SK	LT	SK	LT
	Definitive	4	6	5	4	3	4	6	7
	Designative	6	14	5	6	8	8	10	15
	Evaluative	12	7	4	6	6	9	7	8
	Advocative	5	4	7	2	7	8	12	6

After classifying the extracted statements into the sixteen cells, I selected three from each category to be included in the Slovak study (for a total of 48). In response to participant feedback about the level of difficulty associated with the study I reduced the size of the statement sample to 33 in Lithuania.<sup>241</sup> While I originally intended to perform this selection at random, closer examination of the statements revealed, that it is, in fact, desirable to strive for a deliberately balanced sample that would enhance the diversity of discourse to be explored by this methodology. I sought this balance with respect to the following statement attributes: group rights vs. individual rights claims; concern with specific vs. all minorities; claims by supporters vs. claims by opponents of expanded rights from minorities / source type. The outcome of this procedure was the q-sample, which I subsequently presented to subjects for sorting.

A diverse group of subjects (46 in Slovakia, 42 in Lithuania) arranged the statements along a scale from strongest agreement to strongest disagreement. The intensiveness of Q methodology means that it always works with a relatively small number of subjects. Forty is the rule of thumb used and any responses beyond that number “would yield little additional information, unless the additional individuals were of a kind not already represented or intimated

<sup>241</sup> Naturally, motivation and commitment of respondents was a key concern. Don Dillman, *Mail and Internet Surveys: The Tailored Design Method* (New York: John Wiley, 2000). The online software used (FlashQ) records the number of second that each respondent spent on each section of the study (pre-sorting, arranging into the grid, revision, free comments, demographic information form).

in the original forty.”<sup>242</sup> These principles of subject selection also related to the kind of inferences that we are able to draw from the uncovered results. Whereas R methodologies would commonly seek to extrapolate claims about the society as a whole with regard to the individual statements, Q methodology focuses on the comprehensiveness of coverage in mapping the discourse uncovered through correlation of subject responses. Thus, “if a discourse exists within a society, we are likely to find it among our subjects, given the degree to which we are careful to include very different kinds of people in our analysis.”<sup>243</sup> Confidence in individual observations is therefore a core aspect of Q analysis and also something that distinguishes it from large-n studies.

Factor analysis is the main statistical procedure employed in processing the data.<sup>244</sup> Crucially, however, the (Q-method) design of this study permits that each respondent’s “sort” be taken as a whole in calculating relevant correlations. Consequently, the results hold information about comprehensive discursive positions, rather than responses to individual statements, balancing the qualitative depth and statistical rigor necessary to study the question of minority rights discourse accurately.

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<sup>242</sup> Dryzek and Holmes, *Post-Communist Democratization: Political Discourses across Thirteen Countries*, 27.

<sup>243</sup> *Ibid.*, 28.

<sup>244</sup> The goal is not to obtain a representative sample with regard to individual respondents but instead to choose participants based on their importance in fulfilling the diversity criterion, which is key for capturing all elements of the existing discourse. In a way, then, the sample *is* representative with regard to probable discursive positions. Hellen Addams and John L. R. Proops, *Social Discourse and Environmental Policy: An Application of Q Methodology* (Northampton, MA: Edward Elgar, 2001); Brown, *Political Subjectivity: Applications of Q Methodology in Political Science*; Danielson, “Q Method and Surveys: Three Ways to Combine Q and R.”; Dryzek and Holmes, *Post-Communist Democratization: Political Discourses across Thirteen Countries*.

**Figure 4.1**     **Grid for statement sorting used in the Slovak study<sup>245</sup>**

Disagree				Neutral				Agree				
-6	-5	-4	-3	-2	-1	0	1	2	3	4	5	6

The two Q-methodology studies that I carried out in Slovakia and Lithuania in the course of the 2008-09 academic year were internet-based,<sup>246</sup> but they also contained a “paper-and-pencil” element, not to exclude subjects without computer skills / internet access. This group included unemployed people and social housing residents, as well as pensioners. Incorporating their opinions upheld the diversity requirement concerning respondent background. The remaining subjects were recruited online. This approach permitted including subjects from all regions of Slovakia and Lithuania, without requiring my presence in these locations. The internet-based tool used to collect this data employs FlashQ freeware. It replicates the hard-copy card sorting originally used for this method and effectively makes the task easier and less time consuming for participants. It associates their responses with demographic information about them, without revealing their identity, which is important given the sensitive nature of this topic (thus making the internet-based approach preferable to in-person sorting). In addition to

<sup>245</sup> Following feedback from subjects in Slovakia about the degree to which they found the study demanding, the Lithuanian study was reduced slightly in size. Instead of 48 statements, subjects sorted 33 claims, on a scale from -4 to +4.

<sup>246</sup> Using FlashQ software, freely downloadable from: <http://www.hackert.biz/flashq/home/>

recording the final Q-sorts from respondents, the program also records how much time they spent on individual parts of the survey, and it provides room for spontaneous responses about the content of the study.

Mapping the political discourse on the subject of minority rights, these studies thus augment the process tracing in the paired comparison of poorly performing Slovakia and highly inclusive Lithuania. The important premise underlying this two-pronged study and the methods chosen to carry it out is that the EU demanded change in ethnic minority policy is possible but not automatic.<sup>247</sup> Because of its particular nature, the minority rights norm need not, in fact cannot, be framed and lived-out in the same way across societies. With this in mind, we should expect to find that especially in the poorly performing countries the existing version of the norm will differ from that already present in the EU.<sup>248</sup>

Of course, there are some trade-offs associated with employing Q-methodology. The main benefit lies in uncovering and mapping the discourse of minority rights, while satisfying requirements of statistical validity. This is possible because the entire methodology taps directly the unique elements of society-specific attitudes toward minorities and their rights. There are no a priori restrictions on the content of the study or its results.<sup>249</sup> A wide range of statements is extracted from the existing debate on the subject, while participant responses to these are recorded and analyzed with minimal intervention from the researcher. The resulting outline of

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<sup>247</sup> Ultimately, the objective is to trace the evolution of the minority rights norm in the discursive space meaningfully delimited by the two Q-studies. Juxtaposed with these measures of the discourse, as well as with the “ideal” norm encouraged by the EU, the behavior of key actors in both states can be interpreted as either advancing towards the constitutive/universal status of the norm or not.

<sup>248</sup> However, it is still possible for it to remain consistent with the broader principles defining the Union as a community of states and the process of navigating this narrow space of legitimacy and effectiveness on the part of NGOs will be the main subject of inquiry in chapter 5.

<sup>249</sup> Traditional surveys, by contrast, have to be preceded by decisions about the limited number of questions to be included. The objection goes that R-surveys “can only measure whether people fit boxes specified a priori by the researcher by providing a generalizable subject-driven organization of the universe of possible ideas about the topic of interest.” Danielson, “Q Method and Surveys: Three Ways to Combine Q and R,” 224.

the discursive positions represents a highly accurate assessment of the different opinion clusters on minority rights and offers a key building block in crafting explanations for the cross-country variation regarding the treatment of ethnic and national minorities. The specificity of the study is of high empirical value but requires that we be extra cautious in making comparisons between cases. Because separate study instruments were developed for Slovakia and Lithuania, there are limits to generalizing the observations from one case onto another. For this reason, I present the two studies separately and their comparison will be constrained to the discussion of broader patterns in minority rights discourse, without undue reliance on the details idiosyncratic to each country. Having said that, the limits to generalizability are tolerable, if the objective extends beyond case comparisons and concentrates on the operation of international norms at the domestic level. The emphasis of the present project is on testing the hypothesis that a norm, which is at once particular and constitutive, will face opposition at the societal level. As a result, the present study lends itself well for drawing conclusions on this count.

Finally, a more traditional paired comparison of Slovakia and Lithuania that relies heavily on field interviews and research conducted in the two countries will complement the Q-methodology approach.<sup>250</sup> The insights gained from conversations with government officials, representatives from the NGO sector, as well as members of the relevant minorities will allow for a more accurate interpretation of the Q-methodology results from each country.<sup>251</sup> To assure the accuracy of responses in the Q-methodology studies, they were administered in Slovak in Slovakia and in Lithuanian in Lithuania, so facilitating the incorporation of existing statements about minorities in their original (i.e. not translated) formulations. I used Slovak to conduct the

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<sup>250</sup> Lithuania: September – November 2008; Slovakia: July – August 2008 and January – February 2009.

<sup>251</sup> I later combine these country studies with data collected during a closing round of interviews at EU institutions in Brussels, which permits drawing more explicit links between domestic policy towards ethnic minorities and the EU enlargement / integration processes.

in-person interviews in Slovakia; in Lithuania I trained and worked with a research assistant who assisted me in processing Lithuanian-language sources. I was able to use English to a considerable extent in conversations with scholars, NGO representatives and government officials there. In interviews with members of the Russian and Polish minorities I used their respective languages.

### **The Word on the Street: Minority Rights in Slovakia and Lithuania**

As Heather Grabbe put it in 2003, a year before the new members joined the EU, “unquestionably the European Union also affects cognitive-normative structures in [Central and Eastern Europe]... but there is still very little convincing empirical work on which to draw in the case of the candidate countries.”<sup>252</sup> It is partly in response to this call that I present the detailed study of minority rights in the period surrounding Eastern European accession to the EU. Most of the work studying the spread of norms at the international level, including democracy promotion in post-communist societies, has relied on diffusion-based models to explain institutional change (or lack thereof).<sup>253</sup> However, studies employing diffusion as the main explanatory mechanism are better at addressing similarity than difference.<sup>254</sup> The present argument, illustrated by the empirical evidence from Slovakia and Lithuania, abandons the assumption that such norm-

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<sup>252</sup> Heather Grabbe, "Europeanization Goes East: Power and Uncertainty in the EU Accession Process," in *The Politics of Europeanization*, ed. Kevin Featherstone and Claudio Maria Radaelli (Oxford: Oxford University Press, 2003), 304.

<sup>253</sup> Daniel Brinks and Michael Coppedge, "Diffusion Is No Illusion: Neighbor Emulation in the Third Way of Democracy," *Comparative Political Studies* 39, no. 7 (2005). Valerie Bunce and Sharon Wolchik, "Favorable Conditions and Playing Favorites: The Wave of Electoral Revolutions in Postcommunist Europe and Eurasia," *Journal of Democracy* 17, no. 4 (2006); Jeffrey Kopstein and David A. Reilly, "Geographic Diffusion and the Transformation of the Postcommunist World," *World Politics* 53, no. 1 (2000); Levitsky and Way, "Linkage Versus Leverage: Rethinking the International Dimension of Regime Change.."

<sup>254</sup> Marco G. Giugni, "Explaining Cross-National Similarities among Social Movements," in *Globalization and Resistance: Transnational Dimensions of Social Movements*, ed. Jackie Smith and Hank Johnston (Oxford: Rowman and Littlefield Publishers, Inc., 2002); Tarrow, *Power in Movement: Social Movements and Contentious Politics*



related change always derives from ideational alignment between geographically proximate societies.<sup>255</sup> Instead, the approach adopted here offers tools for studying the variation in receptiveness to international norms that stems from a dissonance between governmental objectives and societal inclinations.

### *Slovakia*

Few countries in East-Central Europe boast a path to democracy and EU membership as convoluted and full of surprising turns as does Slovakia. In the mid-1990s, the surprises lay in the country's divergence from its Czech sibling and the apparent resistance to Western pressures for reform. In the early 2000s, Slovakia's quick reversal of course and apparent catching up on the other EU candidates was equally unexpected. Finally, the re-entry of populist and nationalist forces into government in 2006 cast a shadow over previously exalted achievements.

Much ink has been spilled on Prime Minister Mečiar's transgressions in the realm of institutional accountability and arrogation of power prior to 1998.<sup>256</sup> The greatest deficiencies in minority politics during this period concentrated on the most numerous ethnic Hungarians. "Memories" of ten centuries of Slovak servitude under Hungarian rule were deliberately harnessed by nationalistically inclined parties, Mečiar's HZDS and its coalition partner the Slovak National Party (SNS), as they buttressed their agenda of shady privatization, redirection of foreign policy eastward, and neglect of economic reform, with nationalist rhetoric.<sup>257</sup>

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<sup>255</sup> The objection that diffusion presents a model that is too linear and mechanistic has previously been raised by Chabot, "Transnational Diffusion and the African-American Reinvention of the Ghandian Repertoire."

<sup>256</sup> See for example Kevin Deegan-Krause, *Elected Affinities : Democracy and Party Competition in Slovakia and the Czech Republic* (Stanford, CA: Stanford University Press, 2006)., Samson, "Slovakia: Misreading the Western Message."

<sup>257</sup> One difficulty lay in the contradictions in content between the Slovak Constitution and the Declaration of independence, specifically the part pertaining to the meaning of citizenship for non-Slovak ethnic groups. Controversially, while the former speaks of citizens of Slovakia, the latter elevates the state-forming nation over

Initially, the Mečiar government made superficial attempts to comply with international instruments on minority rights, “pledging” to take Western concerns into account,<sup>258</sup> and signing the Council of Europe Framework Convention in 1995. The implementation, however, was deferred to some uncertain point in the distant future, a problem further aggravated by other damaging moves on the minority issue. Especially the language laws devised by the parliament dominated by HZDS and the SNS (balanced only by an incoherent opposition of squabbling small parties and HZDS dissenters), produced a number of controversies. The main outcome was the exclusion of Slovakia from the first round of EU entrants and by 1998 the time was ripe for a reassessment of priorities by Slovak electorate and political elites alike.

Following a 1998 electoral victory, the pro-reform coalition led by prime minister Dzurinda’s SDK party<sup>259</sup> reversed course and quickly earned a reintroduction to the line-up of EU candidates based on economic criteria. It seemed that the political situation improved rapidly as well, leading some to list Slovakia as the clearest example of the effective working of EU conditionality.<sup>260</sup> Cautious praise on the minority-rights legislative steps began to appear in European Commission’s Regular Reports, with the one from 1999 concluding that “thanks to the changes introduced since September 1998 Slovakia now fulfils the Copenhagen political criteria.”<sup>261</sup>

Yet, despite the visible success on the political criterion, much business remained unfinished and the most recent report by the Council of Europe specifies the challenge:

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non-state-forming minorities, opening up the possibility of define Slovak citizenship on two levels, the lower one occupied by minority citizens. Since ethnic minorities make up 18-23% of the Slovak population, the concern about the implied exclusion from civil rights was a serious one. The range stems from an attempted adjustment for the members of the Roma minority, who list their nationality as Slovak, despite belonging to this minority ethnicity. See for example "Agenda 2000 - Opinion on Slovakia."

<sup>258</sup> Samson, "Slovakia: Misreading the Western Message."

<sup>259</sup> Strengthened through reelection /2002/ and transformation into Slovak Democratic and Christian Union – SDKU

<sup>260</sup> Rupnik, "Eastern Europe: The International Context."

<sup>261</sup> "Regular Report: Slovakia," (European Commission, 1999).

While the adoption of the Anti-discrimination Act in 2004 significantly strengthened the existing legal framework, an important provision allowing the introduction of positive measures to address disadvantages linked to racial or ethnic origin has not entered into force due to the fact that the Constitutional Court, in its decision of October 2005, found the said provision unconstitutional.<sup>262</sup>

This legal provision would have incorporated the possibility of affirmative action consistent with the relevant EU directives and the failure to introduce this measure was further criticized by the Council of Europe Commissioner for Human Rights.<sup>263</sup> Abandoned by the second Dzurinda government,<sup>264</sup> the outstanding legislative tasks were even less likely to be taken up by its successors. The EC assessments failed to take into consideration the dampening effect that the elimination of pressure following Slovakia's entry in to the Union would have on the country's responsiveness to external calls for minority inclusion.

The first election following EU accession (in June 2006) brought victory to the leftist populist party (SMER) led by Robert Fico, who was already known for his displeasure with Slovakia's joining the EU "with naked bottoms" – a phrase that was boldly illustrated on the party's promotional billboards. Refusing to be associated with the outgoing pro-reform parties, SMER joined an awkward coalition with two partners from the mildly-to-extremely nationalist camp, both of whom held a big share of responsibility for Slovakia's initial rejection from the

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<sup>262</sup> "Resolution Rescmn(2006)8 on the Implementation of the Framework Convention for the Protection of National Minorities by the Slovak Republic ", (Council of Europe, 2006).

<sup>263</sup> "Follow-up Report on the Slovak Republic (2001-2005): Assessment of the Progress Made in Implementing the Recommendations of the Council of Europe Commissioner for Human Rights," (Strasbourg: Council of Europe, 2006).

<sup>264</sup> Dostál, "National Minorities.."

line-up of candidates in 1997.<sup>265</sup> The notoriously controversial nationalistic and xenophobic exclamations by the leader of the Slovak National Party (SNS), Ján Slota, took the place of concerted efforts to improve the situation of ethnic minorities.<sup>266</sup> Combined with a leadership change in the ranks of the Hungarian party in Slovakia that saw moderate politicians replaced with those more willing to exchange punches with Mr. Slota, the Slovak nationalist remarks have contributed to the deterioration in the political climate surrounding the majority-minority interaction. Other concurrent developments aggravated this discursive shift away from unconditional guarantees of ethnic minority rights. An ongoing controversy concerning a highly politicized case of a purportedly ethnically motivated assault on a Hungarian university student in 2006 shed further doubt on the priority that the new government was attributing to guaranteeing minority rights. Accompanied by much confusion and emerging evidence that the investigation of the incident was plagued with procedural mistakes, the case had divided the Slovak society. To little surprise of some, “it reopened a poorly-healed rift...and once again cast the country’s ethnic relations in a bad light.”<sup>267</sup>

Beyond rhetoric, the failure to implement laws that were drafted in a promise to the EU enlargement officials was indicative of a decreasing commitment to minority rights guarantees. The SNS-appointed ministers introduced measures that arguably privileged the Slovak majority

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<sup>265</sup> Actors in the EU then scrambled to gather normative leverage, and the nominally left-leaning SMER was expelled from the socialist caucus in the European Parliament in the fall of 2006 (on the grounds of their coalition partnership with extreme nationalists). The shaming effect, however, was short lived and with EU’s popularity at stake the pressure eased gradually.

<sup>266</sup> Slota personally was rated the third “most trustworthy” politician in a survey conducted by the Statistical Office of the Slovak Republic in early September 2007. In the same survey Vladimír Mečiar came in fourth. Pavol Marchevský, “Dôvera Občanov Sr K Politikom Začiatkom Septembra 2007,” (Bratislava: Ústav pre Výskum Verejnej Mienky pri Štatistickom Úrade Slovenskej Republiky, 2007). The nationalist leader declared the creation of a Slovak-Hungarian history textbook that might contribute to a shared and reconciliatory view of the two nationalities’ century-long coexistence in overlapping territories, as “impossible.” “Slota: Vytvorit’ Slovensko-Maďarskú Učebnicu Dejepisú Je Nemožné (Slota: Developing a Slovak-Hungarian History Textbook Is Impossible),” *Slovak Information and Press Agency (SITA)*, no. March 5, 2007 (2007).

<sup>267</sup> Marian Lesko, “The State Vs. Malinova,” *Transitions Online* (2007). The investigation of the case has dragged on and generated waves of controversy, most recently in September 2009.

over minorities. The Ministry of the Environment, for instance, tabled a 2006 decree that sent bonus funding to areas exposed to “colder winters,” which happen to cluster in the north of the country, populated by the Slovak majority. The Ministry of Regional Development can be held accountable for the lacking infrastructure, primarily in the form of major highways, in the southern parts of Slovakia. Contrary to claims by Prime Minister Fico, the recent presence of nationalists in the Slovak executive has not been without a footprint on minority-majority relations – a footprint that goes beyond mere legitimization of the anti-minority discourse and antagonizing remarks by nationalist party elites.

In terms of the minority rights norm, *formal* adherence to international conventions is more solid than the recent domestic political developments might suggest. Slovakia has both signed and ratified the Framework Convention for the Protection of National Minorities. The Ministry has engaged in the painstaking effort of providing materials for the Convention’s monitoring and has played a significant role in toning down the increasingly common altercations between Slovak and Hungarian politicians.<sup>268</sup> As far as official positions go, the minority rights question has been awarded a high priority in the distinct effort to align Slovakia’s policy with the EU-preferred framing of the topic as a civil society strengthening project. For example, the Director of the Slovak Government’s Human Rights and Minorities office decisively rejected any references to minority rights as a concept applying to collectivities, rather than individuals.<sup>269</sup> Arguably, then, Slovak government officials have learned from the minority-neglecting fiasco of mid-1990s. As far as the country’s foreign policy goes, compliance with international agreements is closely linked to the image that Slovakia would like to project outward – the image of a tolerant and inclusive democracy worthy of EU membership. The

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<sup>268</sup> Interview with Miriam Joklova.

<sup>269</sup> Interview with Milica Janculova.

constitutive effect of minority rights has been at work. There is little in the country's foreign policy and official governmental positions that would explain the at best halting progress on minority integration

The only way to account for the discrepancy between foreign and domestic policy is to recognize two separate minority strategies pursued by Slovak political leadership. One directed outward, one targeting the Slovak electorate. In order to shed some light on this schizophrenic process of policy creation this chapter sets out to analyze the existing discourse on the subject of minority rights protection. If governments are able to say one thing and do another it means that they have a receptive audience at home that is willing to tolerate such ambiguity. Instead of relying on ex post facto electoral results to estimate the nature of this support, q-methodology offers a much more direct look at where the Slovak society *as a whole* stands on minority rights. At this point it may be fitting to emphasize that the purpose of this study (and the one from Lithuania) is to provide a snapshot of the discourse on minority rights. The version of the discourse in late 2008 and early 2009 may reflect accumulated positions from the preceding period that continue to be legitimate. In its present design, however, the study does not explicitly trace the development of the discourse over time. To extend the study's reach to the period between 1998 and 2008, it is necessary to combine it with the findings from a survey of Slovak press from these years as well as interviews with key actors involved in advancing the position of minorities in the country. The final part of this chapter will be devoted to drawing these links.

The study of responses from a highly diverse group of participants<sup>270</sup> uncovered three distinct clusters of opinion that comprise separate discursive positions. I labeled them 1./

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<sup>270</sup> With regard to age, gender, socio-economic status, ethnic background and place of residence.

informed pragmatism, 2./ intolerant nationalism, and 3./ moderately tolerant indifference.<sup>271</sup> I present all three factors by means of a self-contained characterization of the discursive position that each of them represents. I also list the full range of statements that statistically<sup>272</sup> distinguish each composite factor. Collectively, they should present a plausible story for the convoluted path to minority inclusion that Slovakia took in the past two decades and so provide evidence supporting the hypothesis that a particular/constitutive norm's performance depends primarily on the societal receptiveness to the changes it brings forth.

### *Informed Pragmatism*

This discursive position reflects a high level of awareness about the tenets of a tolerant society and inclusive democracy (2, 28, 10). It shows disagreement with the traditional nationalist talking points, such as defending the sanctity of the Slovak language or blaming Hungarians for stirring up trouble (1, 5, 35, 14). The minority rights issue is a very real one (45) and it is undesirable to make statements likely to ignite ethnic tensions (38, 14). Informed pragmatism recognizes the enormity of the minority inclusion task ahead (18, 47, 16) but insists that change is necessary and concerns everyone in Slovakia (36, 32). There is some hesitation regarding the compromises that will be necessary (7) but informed pragmatism is nevertheless sensitive to the nuances in addressing minority problems and open to concessions where it favors practicable solutions (19, 11). The pragmatic attitude

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<sup>271</sup> Consistent with factor analysis and q-methodology convention, these titles were derived from the distinguishing statements that bore highest statistical significance and occupy the poles of extreme agreement or disagreement in the composite (idealized) factors.

<sup>272</sup>  $p < .05$ , asterisk (\*) indicates significance at  $p < .01$

continues into preferred approaches that call for domestic responsibility without looking for help abroad (40, 26).

**Table 4.2 Factor A – Informed Pragmatism<sup>273</sup>**

No.	Statement	Rank
2	Every civil society has to enable the members of its national minorities to exercise their rights.	6*
28	Even the highest political representatives in Slovakia do not avoid racist discourse; representatives of some political parties deliberately employ it to increase their popularity among voters.	5*
18	Upholding and protection of human rights and basic freedoms, including those of persons that belong to national minorities, are not a topic for a few days or weeks. It is a long-lasting theme that concerns us all.	5*
19	We have to differentiate among the Roma, who are not a homogenous group but an internally divided one.	4*
47	The solution to the difficult situation of many Roma in Slovakia remains one of the most significant challenges faced by our society, especially if it is to claim the values of a democracy.	3*
36	Discrimination is part of everyday life in all of Slovakia. People often consider discrimination part of their life and are indifferent to it.	2*
11	It is necessary to enable the development of a minority and its members in a way that allows it to choose its own path. Of course, while maintaining state sovereignty and in compliance with the law.	2*
16	A deep ideological and cultural separation exists between a Roma village and a non-Roma town. Meanwhile, there are many who do not see a problem with this.	1
10	In a united Europe, the leadership in our country has to provide the citizens with guarantees of their social rights, as they belong to basic human rights, whether we like it or not.	1*
20	It is not a problem in a democratic state for members of a minority to be able to gather and live out their national identity, nurture their traditions and folklore, should they have it.	0*
37	With regard to the Roma issue is important to note that we are talking about people who are several times more disadvantaged than others, they are very poor, unemployed, they live in typical locations with poor infrastructure and so on.	0*
39	It is unacceptable for uneducated children who do not speak the state language to leave our schools.	0*

<sup>273</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .01$ .



4	An emphasis on multiculturalism ought to be the primary goal of Slovak legislators and the executive.	0*
27	The space for the rights of national minorities has been gradually shrinking in Slovakia.	-1*
7	In regions where the majority of the populations is of Hungarian nationality, this minority ought to have greater possibilities to develop its native language in the sphere of education and culture.	-1*
40	Prior to Slovakia's entry into the European Union the politicians were a lot more interested in the concerns of minorities.	-1
26	If the Roma and Non-Roma really wanted change, it would have happened already.	-2*
1	Slovaks have the right to protect their language – without it they would lose their statehood.	-2*
5	The government of the Slovak Republic is the government of a sovereign country. We simply cannot permit that the highest representatives of other countries, especially Hungary, behave in Southern Slovakia, as if they were in Northern Hungary.	-3
35	Until all residents of Slovakia accept Slovakia as their homeland there will be no peace in Slovakia.	-3*
46	Slovakia provides above-standard care to its minorities.	-4*
41	Slovak political parties treat the issue of national minorities with care, they do not extract political capital from opportunistic references to this topic and so contribute to maintaining fair civil relations in the Slovak Republic.	-4*
38	The Hungarian side is more responsible for the worsening of relations between Slovaks and Hungarians.	-4
32	Problems stemming from discrimination and racism are faced solely by the Roma minority.	-5*
45	Minority politics is damaging, this nation has to unite, not “minoritize” itself. Are we going to have national minorities, minorities based on orientation[sic], religious, social... what is it good for?	-5*
14	Hungarians disrupt relations all over central Europe.	-6*

### *Intolerant Nationalism*

This discursive position values sovereignty of the Slovak nation and underscores this with the inviolability of the Slovak language, to the point of defensiveness against any outside intrusion (5, 44). This verges on belligerent attitudes towards minorities and their allies (14, 38, 11). Intolerant nationalism is not open to any concessions that would privilege the minorities (34, 7). The Roma situation appears hopeless and not worth much effort to control / repair the damage done (42, 12). Minorities have rights (2) but these should not receive any priority over the rights of non-minorities. This version of nationalism does not see much value in differentiating between minorities or among citizens of Slovakia more generally (24, 27, 44). There are no deficiencies in the treatment of minorities (46, 36), nor are there many concessions to be offered on this front (11, 34). There are hints of illiberal inclinations that round off the intolerant quality in this discursive position (10, 22).

**Table 4.3      Factor B – Intolerant Nationalism<sup>274</sup>**

No.	Statement	Rank
5	The government of the Slovak Republic is the government of a sovereign country. We simply cannot permit that the highest representatives of other countries, especially Hungary, behave in Southern Slovakia, as if they were in Northern Hungary.	5*
46	Slovakia provides above-standard care to its minorities.	4*
2	Every civil society has to enable the members of its national minorities to exercise their rights.	2*
14	Hungarians disrupt relations all over central Europe.	2*
24	The quality of life of the minorities goes hand in hand with the quality of life of all citizens.	1*
38	The Hungarian side is more responsible for the worsening of relations between Slovaks and Hungarians.	1*

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<sup>274</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .01$ .

16	A deep ideological and cultural separation exists between a Roma village and a non-Roma town. Meanwhile, there are many who do not see a problem with this.	0
35	Until all residents of Slovakia accept Slovakia as their homeland there will be no peace in Slovakia.	0*
19	We have to differentiate among the Roma, who are not a homogenous group but an internally divided one.	0*
17	The Roma problem has seemingly three ends – whichever your grab, the prospects are unclear. Some say that we must begin with education, others see the solution in offering employment to the Roma and a third group advocates improved living conditions. They are all interconnected, though.	0*
11	It is necessary to enable the development of a minority and its members in a way that allows it to choose its own path. Of course, while maintaining state sovereignty and in compliance with the law.	-1
33	Documents, which after the Second World War limited the civil and property rights of the Hungarian and German minority in Slovakia are irrevocable.	-1*
10	In a united Europe, the leadership in our country has to provide the citizens with guarantees of their social rights, as they belong to basic human rights, whether we like it or not.	-1*
34	In order to secure practical equality of opportunity and preserve the principle of equal treatment, special equalizing measures that will eliminate the disadvantages stemming from racial or ethnic origin may be taken.	-1*
42	By elevating it to the status of a nationality and codifying its language, we contribute to strengthening the identity awareness of the Roma minority, their pride and initiative but we will also obtain their respect for the majority nation.	-2*
12	We may not allow that the causes of the present state of marginalized communities be reduced only to the nationality level, as this effectively amounts to transferring the responsibility for this situation to the Roma themselves.	-2*
22	Attributing racial background to social backwardness is one of basic expressions of racism.	-3*
36	Discrimination is part of everyday life in all of Slovakia. People often consider discrimination part of their life and are indifferent to it.	-3*
40	Prior to Slovakia's entry into the European Union the politicians were a lot more interested in the concerns of minorities.	-4
41	Slovak political parties treat the issue of national minorities with care, they do not extract political capital from opportunistic references to this topic and so contribute to maintaining fair civil relations in the Slovak Republic.	-4*
7	In regions where the majority of the populations is of Hungarian nationality, this minority ought to have greater possibilities to develop its native language in the sphere of education and culture.	-5*
27	The space for the rights of national minorities has been gradually shrinking in Slovakia.	-5*

44 The demands of national minorities are much more important than any other challenges currently faced by Slovakia.

-6\*

### *Moderately Tolerant Indifference*

The overall attitude within this discursive position is conflict averse, relatively tolerant and accepting of differences (25, 30, 48). Minorities alone should not be blamed for the situation (38, 14). Low-tension policy solutions are preferred (16, 43) and neither the minority, nor the majority should be asked to sacrifice much (5, 35). However, there are also limits to the concessions that should be granted to minorities – minorities should not be given a blank check in developing their culture (11, 2, 7). This hesitation is coupled with a lack of awareness of the complexity associated with the current situation of minorities in Slovakia (36, 19). The neutral attitude on statements about the contentiousness of Slovak minority politics and the extent to which the situation of minorities is a society-wide problem betrays a low level of interest in politics in general (29, 41).

**Table 4.4      Factor C – Moderately Tolerant Indifference<sup>275</sup>**

No.	Statement	Rank
25	Whereas the Hungarian minority is a part of the political and economic life with an important positive influence on the state's internal and external orientation, the Roma minority is unable to solve its problems without the help of the state and its solidarity.	5*
43	Covering our eyes before the problems of Roma communities that need targeted help probably is not the path leading to an improvement of the situation.	5*
30	Although a certain degree of distrust exists between Slovaks and Hungarians, both nationalities are used to living side by side.	4*
48	It is important to deepen the principle of equality among citizens regardless of nationality, the specific attributes of national groups, or their needs.	4*
10	In a united Europe, the leadership in our country has to provide the citizens with guarantees of their social rights, as they belong to basic human rights, whether we like it or not.	3*

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<sup>275</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .01$ .

29	So far, minority politics is not recognized as everyone's problem.	0
23	By recognizing the "Roma problem" we automatically deny the constitutionally anchored equality of all national minorities residing here, because no Hungarian, Ukrainian or other minority "problems" exist.	0*
41	Slovak political parties treat the issue of national minorities with care, they do not extract political capital from opportunistic references to this topic and so contribute to maintaining fair civil relations in the Slovak Republic.	0*
16	A deep ideological and cultural separation exists between a Roma village and a non-Roma town. Meanwhile, there are many who do not see a problem with this.	-1*
2	Every civil society has to enable the members of its national minorities to exercise their rights.	-1*
19	We have to differentiate among the Roma, who are not a homogenous group but an internally divided one.	-1*
11	It is necessary to enable the development of a minority and its members in a way that allows it to choose its own path. Of course, while maintaining state sovereignty and in compliance with the law.	-1
31	Majority intolerance of the Roma minority is bound to continue for many more years in Slovakia.	-2*
5	The government of the Slovak Republic is the government of a sovereign country. We simply cannot permit that the highest representatives of other countries, especially Hungary, behave in Southern Slovakia, as if they were in Northern Hungary.	-2
40	Prior to Slovakia's entry into the European Union the politicians were a lot more interested in the concerns of minorities.	-2
46	Slovakia provides above-standard care to its minorities.	-3*
35	Until all residents of Slovakia accept Slovakia as their homeland there will be no peace in Slovakia.	-3*
27	The space for the rights of national minorities has been gradually shrinking in Slovakia.	-3*
7	In regions where the majority of the populations is of Hungarian nationality, this minority ought to have greater possibilities to develop its native language in the sphere of education and culture.	-4*
38	The Hungarian side is more responsible for the worsening of relations between Slovaks and Hungarians.	-5
36	Discrimination is part of everyday life in all of Slovakia. People often consider discrimination part of their life and are indifferent to it.	-5*
14	Hungarians disrupt relations all over central Europe.	-6*

The three factors that prevail in Slovak minority rights discourse show a great deal of variation with regard to the assessments of current challenges faced by minorities, the degree to

which these represent a problem, as well as the preferred solutions and possible concessions. The aim in devising this study was to select the broadest possible range of statements that filled Slovak press and public pronouncements on the subject between 1998 and 2008. This meant including tenets of liberalism side by side with decidedly nationalist statements. However, the subjects were encouraged to express their agreement or disagreement with the statements and it was by no means a given that the uncovered discursive pattern would be so contradictory. Factor A (*informed pragmatism*) reflects a high degree of tolerance for minorities coupled with a strong desire to address the situation, tainted only by skepticism resulting from an awareness of failed efforts to do so in the past. By contrast, Factor B (*intolerant nationalism*) showed considerable preoccupation with dwelling on the past and fueling existing prejudices about minorities. Individually, these two discursive positions explain the largest proportions of the variation detected by the study (24% and 13%, respectively).<sup>276</sup> Without attributing representativeness to these opinion clusters, which is not something Q-methodology is equipped to do, we are nevertheless able to observe a deep split in the Slovak society when it comes to perceptions of minorities and their rights.

There is one feature, however, that *informed pragmatism* and *intolerant nationalism* have in common – they both represent rather uncompromising positions characterized by a great deal of commitment to defending the claims they make. This involvement does not continue into the third factor detected in this analysis – *moderately tolerant indifference* (Factor C). As the label that it was assigned suggests, the discursive investment in the altercation between minority rights advocates and “true Slovaks” is minimal. Sweeping all trouble under the rug and hoping it will disappear seems to be the solution most consistent with this discursive approach and any references to the issue mean asking for trouble. Factor C seems to have absorbed some of the

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<sup>276</sup> These numbers already reflect the effect of the Varimax rotation of three factors.

prevailing rhetoric aimed at both satisfying western standards and feeding homegrown stereotypes. It shows both indecisiveness and indifference and adequately fills the space between the two remaining factors. Feasibly, citizens who subscribe to this position in the discourse on minorities could be swayed to join the tolerant camp (Factor A), as well as the more exclusive position advancing Slovak national values (Factor B).

The three positions offer abundant clues about the volatility of support for minority rights in Slovakia. Throughout my fieldwork in the country, I was frequently reminded about the unpredictability of positions that people might take on the subject and the absolutely lacking consensus about what constitutes legitimate policy in this issue area. I encountered repeated headshaking about the futility of my research effort, accusations of “siding with the Gypsies,” but also whole-hearted support and encouragement, mostly from people who had some knowledge about the life of minorities. A one-of-a-kind field encounter illustrates how *informed pragmatism*, *intolerant nationalism* and *moderately tolerant indifference* play out in everyday life.

The busy schedule of one of my interviewees, a Slovak-Hungarian sociology professor and former representative at the OSCE,<sup>277</sup> forced us to begin our conversation about the life of minorities in Slovakia on a bus, during his morning commute. We were both genuinely interested in each other’s perspective on the subject and an involved exchange of view followed soon after. At first, we just received strange looks from our fellow bus riders, which I attributed to the fact that we were talking about more than the weather. I detected certain animosity only when two older ladies, who were sitting in the seat immediately in front of us got up and moved, demonstratively, to sit as far away as possible, shaking their heads as they did so. We were really in trouble, I thought, when towards the end of that thirty-minute bus conversation a young man

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<sup>277</sup> Organization for Security and Cooperation in Europe.



across the aisle, who had been looking disapprovingly in our direction all along, finally got up at about the moment we were discussing the comparability of the Hungarian and Roma experiences and announced: “I cannot listen to that garbage anymore!” My interviewee informed him, perfectly calmly, that he did not have to listen – there were several empty seats left farther away. After we were almost the only people left in the front of the bus, the Slovak-Hungarian intellectual I was speaking with just shook his head and said to me with a slightly sad laugh: “We weren’t even saying anything!”<sup>278</sup> I agreed but deep inside I was glad this conversation occurred on a bus between Bratislava and a south-Slovakian town, where the respect for minorities is probably greater than anywhere else in the country.<sup>279</sup>

### *Lithuania*

In its recent journey as an independent nation with a proud history reaching to the Middle Ages, Lithuania has not been short on strong national spirit. At about the time the country chose to secede from the Soviet Union, the leader of the independence struggle Vytautas Landsbergis declared: “Moscow can annihilate us, they can set up another puppet regime here but they cannot kill our wish for freedom”<sup>280</sup> As the first Soviet republic to claim sovereign rule over its territory (1990), Lithuania sent encouraging independence-struggle signals throughout the region. Carefully navigating the stormy waters of a disintegrating Soviet Union, the Lithuanian leadership managed not to provoke an intervention from Gorbachev, nor did it alienate the international opinion. A February 1991 referendum on the independence question, 85% turnout

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<sup>278</sup> Professor Kálman Petoetz.

<sup>279</sup> The town that we were headed to was Šamorín, home of the Forum Institute – a prominent think-tank organization studying and educating the Hungarian minority in Slovakia – where I continued my interview with Professor Petoetz. According to the 2001 census Šamorín is home to 66.63% Hungarians and 30.96% Slovaks.

<sup>280</sup> Quoted in Lane, “Lithuania: Stepping Westward,” 120.

and a decisive “yes” vote (90%), took all the arguments away from conservatives in Moscow, and Lithuania’s independence was recognized in September of that year.

Given the widespread support for independent statehood and strong nationalist sentiment in Lithuania, one might have expected the country to continue the emotional road to independence with a strong stance vis-à-vis the minorities. That is the path that post-independence Latvia and Estonia embarked on, giving way to “majority insecurity” in dealing with other ethnic groups in their societies.<sup>281</sup> The opposite scenario, however, unfolded in Lithuania. With the restoration of independence, citizenship was granted to all residents, regardless of ethnic origin – the proportion of citizen inhabitants reached 90% by 1996.<sup>282</sup> Looking for reasons behind this path of openness and moderation, some authors have described the Lithuanian story as one of “pragmatic inclusiveness and fear of uncertain loyalty.”<sup>283</sup> The liberal citizenship laws and progressive minority language legislation were not introduced without widespread debate of these issues, in which both a radical flank of the nationalist movement (Lithuanian Freedom League) and much more cautious reformers that had led Lithuania to independence (*Sajudis*, Communist Party of Lithuania) were represented. The *Sajudis* movement, whose moderate wing made the critical decisions in the early years of the country’s existence, proved most influential and chose to disregard the radical demands, banking on the pragmatism of such a move and the broad support that it enjoyed in the wake of independence.

This is not to say, however, that gaining minority support for the pro-independence measures was an easy task. Ethnic Poles and Russian speakers, some of whom opposed secession

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<sup>281</sup> See Chapter 4 in Dovile Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States*. (Burlington, VT: Ashgate Publishing Company, 2005).

<sup>282</sup> Lane, "Lithuania: Stepping Westward," 135.

<sup>283</sup> Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States*.

from the Soviet Union, organized in the *Yedinstvo* (Unity) movement, seeking only limited, if any, autonomy from the Soviet union. Again, stealing the wind from this movement's sails was an important motivation behind the inclusive approach to minorities that sought to prove that the new Lithuanian majority had no intentions of dominating other ethnicities within its territory. Opposition existed also on the Lithuanian side, when the *Vilnija* movement (named after the region surrounding the capital), insisted that "re-lithuanization" of their previously "polonized" compatriots in the south-east of the country would be the appropriate response to the minority situation. However, the young Lithuanian government at the time disregarded these radical calls and continued its tolerant minority policies. It was conscious of the international gaze (but not explicitly responding to any conditionality arrangements, as these had not yet been fully formulated) and sought improved relations with Poland.

Lithuania was sensitive to the perceived precariousness of the minorities' situation when it passed a law as early as 1989<sup>284</sup> guaranteeing state aid for cultural development, training of specialists to respond to needs of ethnic cultures, and the use of minority languages in public areas. The law was soon amended (1991), to secure minority-language education and the use of minority languages in offices and organizations located in areas with substantial minority representation. The provisions were made more strict only with a 1995 amendment, which did not strip minorities of their existing rights, but required representatives of local institutions to know the state language, mandated instruction of the state language in all secondary schools and assure protection of "linguistic norms" in the use of Lithuanian.<sup>285</sup> This change, was to assuage the worries that the Russian and Polish speakers had no incentives to learn the state language under the previous arrangements. It did not go without some opposition from the representatives

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<sup>284</sup> In fact, Lithuania was the first country in the entire Central and Eastern Europe to do so.

<sup>285</sup> Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States.*, 144-45.

of the Polish minority and slightly less so by representatives of the more dispersed Russian minority.<sup>286</sup> Yet, given the low-tension political climate, the increasingly friendly relations with Poland, and the tendency of the general ethnic Polish opinion to be “more moderate and more indifferent”<sup>287</sup> than that of their leaders, the claims-making did not escalate.<sup>288</sup>

In a broader measure of the overall attitude towards ethnic diversity, leaders of the independence movement and their successors engaged in a dialogue with minorities and worked on policies that they believed would be acceptable to all. Consciously referring to Lithuania’s historic tolerance for minorities, dating back to the “magnanimous” days of a culturally diverse medieval kingdom they highlighted the one element of popular discourse that could be harnessed in favor of sustainable minority rights policy.<sup>289</sup> In a similar way, explicit references to this history of toleration were made without exception in my interviews (fall 2008) with members of the Polish minority, the Russian-speakers and ethnic Lithuanians. In fact, it was the most common way for my interviewees to begin our conversation, whenever I asked them to freely introduce their perspective on the subject.

It is therefore not surprising that this friendly disposition towards minorities translated into electoral outcomes as well. In the 2004 parliamentary election, the first after Lithuania’s entry into the EU, the Labor Party claimed the victory. Significantly, its leader was a Russian-born entrepreneur, whose heavy accent did not seem to interfere with Lithuanian voting preferences. The party formed a coalition with the Social-Democratic Party and made a point to include members of minorities in the government. Most notably, a vice-prime ministerial post

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<sup>286</sup> Lane, “Lithuania: Stepping Westward,” 151.

<sup>287</sup> Ibid., 153.

<sup>288</sup> By 2000 only 23% of Lithuanians and 10% of Russian speakers found the ethnic tensions a potential source of insecurity for their country. For comparison, the respective numbers were 53% and 27% in Estonia and 43% and 27% in Latvia. “Baltic Voices: New Baltic Barometer,” <http://www.balticvoices.org/nbb>.

<sup>289</sup> Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States.*, 151.

and that of the special advisor to the Prime Minister for minority issues went to representatives of the Polish minority. Lithuania's Poles and Russians found the social democratic coalition more receptive to the demands of minorities and welcomed the commitment to compliance with European minority rights standards.

Yet, the party representing the Polish minority (Electoral Action of Poles in Lithuania – EAPL) describes itself as a regional party, defending the interests of the less developed regions in Lithuania, while advocating a minority friendly (but not minority specific) array causes. On some of these, the EAPL comes closer to its social-democratic allies (e.g. on regional growth and questions of unemployment), whereas its positions on social issues bear closer affinity to Lithuania's conservative parties. In many respects, it is an issue-driven party, as much as one devoted to advocating the rights of the Polish minority. An EAPL candidate for the parliament admitted that there are content issues that he could see his party pursuing at the expense of ethnically-driven claims, for example the stance on abortion, which they share with the conservative parties in Lithuania.<sup>290</sup> This overlap was pointed out also by some representatives from the non-governmental sector active in the sphere of minority rights. The malleability of EAPL's electoral goals is further illustrated by the coalition that it created with the Lithuanian Union of Russians prior to the 2008 parliamentary vote. It did so in an effort to launch an all-minority platform whose demands centered on alleviating the socio-economic, rather than cultural isolation of minorities.<sup>291</sup>

Integration of minorities and their access to the political process in Lithuania is most apparent at the local level. The single-member district element in the electoral system makes minority candidates more viable than pure proportional representation would permit. Familiarity

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<sup>290</sup> Interview with Tadeusz Andrzejewski.

<sup>291</sup> Irina Rozova, pre-election town hall meeting, October 6, 2008.

with local conditions faced by minorities further helps their representatives. Yet, the most direct and effective involvement of minorities occurs at the municipal council level. The issues that prevail concern minority education, radio and television broadcasting in minority languages, as well as opportunities for cultural development and the related financing questions. These matters, do not lag behind other questions occupying municipal politics and the quality of available solutions largely depends on the qualifications of representatives, not their ethnic background, or even political affiliation.<sup>292</sup> Notably, Lithuanian majority does not perceive the political participation of minorities as a challenge to state sovereignty or as a threat to the nation's cultural purity. Participation is an essential element of the privilege of citizenship that was bestowed on all, without difference.<sup>293</sup>

Detailed observation of political developments in Lithuania since independence suggests a widespread preference for inclusiveness in the treatment of minorities. Unlike in Slovakia, a broader agreement on the subject has allowed for more coherent policy and public attitudes towards minorities and should be reflected in the discourse-mapping study. Again, three distinct factors were uncovered and labeled: 1./ self-conscious nationalism, 2./ sympathetic discontent, and 3./ distant individualism. The focus from now on will be on exploring the variations between these clusters of opinion and relating them to broader developments on the minority rights front in Lithuania. In terms of the main argument – that the ease with which the minority rights norm spreads is primarily affected by societal attitudes – uncovering a strong nationalist sentiment at the level of public discourse would be inconsistent with the core hypothesis.

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<sup>292</sup> Interview with Larissa Dimitrieva.

<sup>293</sup> Interview with Petras Auštrevičius, MP.

### *Self-Conscious Nationalism*

This discursive position recognizes the value of diversity and the role currently played by minorities in securing it (13, 7). In the same way it expresses mild fears for preserving Lithuanian identity (15) and advocates defending of the nation's sovereignty against intrusion from surrounding states under the cloak or protecting kin minorities (3, 29, 5). The focus is on the future, as opposed to dwelling on the past (16, 18). Existing solutions to assuring integration of minorities seem sufficient (6, 23, 11) and there is little reason to sacrifice much to address the issue (neutral on 30, 20). Any lingering issues will solve themselves and do not require extensive actions from politicians, the majority, or even the minorities (22, 8, 18). Minority claims are seen through the historical, inter-cultural lens (29) and have little to do with economic issues that concern all Lithuania's citizens equally, without generating ethnic tension (30, 4).

**Table 4.5      Factor A – Self-Conscious Nationalism<sup>294</sup>**

No.	Statement	Rank
15	A citizen of Lithuania has to know the Lithuanian language, this is his obligation and an expression of his respect for the country, in which he's living.	4*
6	There are excellent conditions for Polish people to learn and to explore their own culture in Lithuania, it's just that not all of them are able to use these.	4*
3	The problems, which may arise, have to be solved without the intervention from the historical motherland of a national minority and the solution has to match the interests of our country.	3*
29	Sometimes national minority organizations voice claims, which contradict the objectives of the state. Mainly, national minorities stick to the attitudes of their historical motherland.	3*
25	Lithuania is a multi-national state in which members of all the nationalities that live	3

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<sup>294</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .01$ .

	here, have to feel well and be safe - all its citizens have equal rights and responsibilities, regardless of their nationality.	
13	The minorities bring different cultures, diversity, and contribute to the life of a country.	2
23	Often, we exaggerate about the problems associated with ethnic tensions.	2*
16	Tolerance and the understanding of dignity, require a struggle of soul and mind. Opening old wounds, settling accounts or indifference won't help here in any way.	2*
11	Public policy in Lithuania is designed to help national minorities keep their identity, to integrate them into the economic and cultural life of the country and to create the atmosphere of tolerance and respect for other cultures.	1*
5	The stereotype that the region of Vilnius, as a foreign territory, has to be colonized by Lithuanians, is spread by the Polish themselves.	1*
26	There are few indications that the negative attitude of the society towards the Roma is going to change in a short time.	1*
2	We have to stop "dwelling on history" and reopening old sores.	0*
30	Political activity in our society could increase, it is good that national minorities are creating their political organizations.	0*
20	If we want to be more tolerant, we have to be more self-critical. Clear cases of intolerance don't meet with a fast political response in our society.	0*
9	The Polish of Lithuania, maybe even without intending this to happen, isolate themselves, sentence themselves to the offside of the social life.	-1*
22	Politicians make too many mistakes, they talk about tolerance but nothing is done about it.	-1*
31	Unfriendly attitudes towards national minorities are stimulated by the bad social and economic conditions and not by the declarations of the politicians or division between national groups.	-2*
4	Once Lithuania reaches a higher standard of living, the problems of national minorities will solve themselves naturally.	-2*
8	Indifference towards the problems of Lithuania's Polish is going to activate their alienation, distancing from state affairs and this can lead to social instability.	-3*
18	Contrary to official propaganda, the relationship between Lithuania and Poland isn't very good. It is overshadowed by the situation of almost 300 thousands Lithuanian Poles, living compactly in the region of Vilnius.	-3*
7	Recently, a tendency of a monoethnic state has developed in Lithuania. National egoism dominates in the field of language usage and a clear policy of assimilation is followed.	-3*
27	The tziganes don't really want to sell drugs but, if the society doesn't accept them, they are going to sell the narcotics.	-4*



## *Sympathetic Discontent*

This element of minority rights discourse recognizes existing obstacles to minority inclusion in Lithuania taking a slightly gloomy view of the current situation (33, 21) and expected future developments (26, 7). It stops short of blaming the difficult situation on the minorities alone (14, 6, 9) or taking an exaggerated view that would simply victimize these groups (24). Minorities are not without their share of responsibility (28, 32, 15, 27) but on this view, they have a steeper hill to climb and should be supported (12, 6, 14).

Sympathetic discontent voices considerable dissatisfaction with the measures currently employed by Lithuanian authorities (22, 28, 12, 11). Complaining, however, is not enough and there is the need for a firm stance regarding the preferred policy solutions (19, 2).

There are no easy solutions (1, 8, 18) and as much as some would like to blame economic factors for the exclusion of minorities, these are not relevant (4, 31).

**Table 4.6      Factor B – Sympathetic Discontent<sup>295</sup>**

No.	Statement	Rank
26	There are few indications that the negative attitude of the society towards the Roma is going to change in a short time.	3*
33	The Lithuanian society is rather inhibited and phobic, unfriendly towards the people of other nationalities and cultures.	3*
22	Politicians make too many mistakes, they talk about tolerance but nothing is done about it.	2*
19	Regarding anti-Semitism - regrettably, these opinions exist: various statements to this effect have occurred in the press. We need to talk to their authors, educate them and punish, to set an example for others.	2*
2	We have to stop "dwelling on history" and reopening old sores.	1*
28	The Roma aren't integrated enough.	1*
32	People of other nationalities don't exercise their rights enough and stay in a periphery	1*

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<sup>295</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .23601$ .

of the political processes in Lithuania.

15	A citizen of Lithuania has to know the Lithuanian language, this is his obligation and an expression of his respect for the country, in which he's living.	1*
7	Recently, a tendency of a monoethnic state has developed in Lithuania. National egoism dominates in the field of language usage and a clear policy of assimilation is followed.	1*
1	Our divisions can be overcome by looking into the future, understanding citizens' position in our country, and participation in social and political life.	0
8	Indifference towards the problems of Lithuania's Polish is going to activate their alienation, distancing from state affairs and this can lead to social instability.	0*
18	Contrary to official propaganda, the relationship between Lithuania and Poland isn't very good. It is overshadowed by the situation of almost 300 thousands Lithuanian Poles, living compactly in the region of Vilnius.	0
12	There is a lot being done for national minorities to keep their national identity, culture, customs. But it is no less important that all the citizens of Lithuania, regardless of their nationality, are full-fledged members of the society, know the state language very well and successfully compete in the labor market.	-1*
24	Russian language in Lithuania is like the flag of the defeated enemy. Everyone is trying to trample it.	-1*
3	The problems, which may arise, have to be solved without the intervention from the historical motherland of a national minority and the solution has to match the interests of our country.	-1*
6	There are excellent conditions for Polish people to learn and to explore their own culture in Lithuania, it's just that not all of them are able to use these.	-1*
27	The tziganes don't really want to sell drugs but, if the society doesn't accept them, they are going to sell the narcotics.	-2*
14	Most of the Russian-speaking people admit that it's difficult to get a job because of the lack of language skills, but they also agree that it's their own problem.	-2*
9	The Polish of Lithuania, maybe even without intending this to happen, isolate themselves, sentence themselves to the offside of the social life.	-2*
11	Public policy in Lithuania is designed to help national minorities keep their identity, to integrate them into the economic and cultural life of the country and to create the atmosphere of tolerance and respect for other cultures.	-3*
21	Many Russians are content with their life in Lithuania not only because the economy has improved, but also because the Russo-phobia is declining.	-3*
4	Once Lithuania reaches a higher standard of living, the problems of national minorities will solve themselves naturally.	-4*
31	Unfriendly attitudes towards national minorities are stimulated by the bad social and economic conditions and not by the declarations of the politicians or divisions between national groups.	-4*

### *Distanced Individualism*

The strong agreement with the statement that calls for a forward-looking attitude in dealing with minority rights questions, rather than “dwelling on history” characterizes this discursive position well (2). The individualist focus is reflected both in highlighting economic (31, 4), rather than cultural and historic aspects of inter-ethnic relations in Lithuania (2, 31, 3) and in emphasizing the role of minorities as Lithuanian citizens (15). This impatience with culture-based collectivistic claims extends also to the pro-active approach in addressing any remaining inequality (8, 22). Distanced individualism is relatively optimistic in envisioning the integration of minorities into the remainder of Lithuanian society (7, 26, 18) with only mild criticism directed at the existing policies (11). The primary skepticism concerns the likelihood of change in the life of the Roma minority (10, 27), and it also betrays a tendency to view ethnic groups as homogenous entities (9).

**Table 4.7      Factor C – Distanced Individualism<sup>296</sup>**

No.	Statement	Rank
2	We have to stop "dwelling on history" and reopening old sores.	4*
15	A citizen of Lithuania has to know the Lithuanian language, this is his obligation and an expression of his respect for the country, in which he's living.	3*
31	Unfriendly attitudes towards national minorities are stimulated by the bad social and economic conditions and not by the declarations of the politicians or divisions between national groups.	2*
8	Indifference towards the problems of Lithuania's Polish is going to activate their alienation, distancing from state affairs and this can lead to social instability.	1*
6	There are excellent conditions for Polish people to learn and to explore their own culture in Lithuania, it's just that not all of them are able to use these.	1*
22	Politicians make too many mistakes, they talk about tolerance but nothing is done	1*

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<sup>296</sup> All included statements are significant at the  $p < .05$  level, asterisk (\*) indicates significance at  $p < .01$ .

about it.

- |    |  |     |
|----|--|-----|
| 4  | Once Lithuania reaches a higher standard of living, the problems of national minorities will solve themselves naturally.   | 1*  |
| 3  | The problems, which may arise, have to be solved without the intervention from the historical motherland of a national minority and the solution has to match the interests of our country.  | 0*  |
| 7  | Recently, a tendency of a monoethnic state has developed in Lithuania. National egoism dominates in the field of language usage and a clear policy of assimilation is followed.  | -1* |
| 26 | There are few indications that the negative attitude of the society towards the Roma is going to change in a short time.   | -1* |
|    |  |     |
| 11 | Public policy in Lithuania is designed to help national minorities keep their identity, to integrate them into the economic and cultural life of the country and to create the atmosphere of tolerance and respect for other cultures. | -1* |
| 18 | Contrary to official propaganda, the relationship between Lithuania and Poland isn't very good. It is overshadowed by the situation of almost 300 thousands Lithuanian Poles, living compactly in the region of Vilnius.               | -2  |
| 10 | Most of the Roma are talented, clever, respectful, they quickly learn languages.   | -2* |
| 27 | The tziganes don't really want to sell drugs but, if the society doesn't accept them, they are going to sell the narcotics.  | -3* |
| 9  | The Polish of Lithuania, maybe even without intending this to happen, isolate themselves, sentence themselves to the offside of the social life.   | -4* |

Lithuania's inclusive approach in accommodating ethnic minority demands makes it unique in its Baltic neighborhood. The strategy from the early post-independence period, continued into the EU-application era and this continuity underpins the consensus about legitimate ways of treating ethnic diversity that has since developed in Lithuania. The coherence is illustrated accurately by the three most dominant factors extracted from existing discourse on the subject. Factor A received the *self-conscious nationalism* label at the risk of evoking negative associations with radical nationalist views. The perspective, however, hardly represents an aggressive discursive position – it is inward looking but at the same focused on tangible

solutions and in doing so it overlaps considerably with the other, decidedly liberal factors.

Lithuanian identity is seen as just one of many elements of the diversity that is valued under this view. It is a perspective shared with *sympathetic discontent* and *distanced nationalism*, variations in the broader framing of minority rights aside. All three factors acknowledge minorities' full rights as citizens of Lithuania, while looking for continuing compromise solutions that will be fuelled by concessions from both sides. In other words, while all factors value Lithuanian identity, they also do not privilege it over the cultural heritage of other ethnic groups. Rather than subsuming diversity under a forcefully unified "Lithuanian people," the survey of the press, participant responses, as well as the interviews I conducted reveal a preference for framing the issue of diversity by references to citizenship. This perspective alone is capable of incorporating the deep-seated awareness of the differences between Lithuania's ethnic groups. Learning about these differences and using the knowledge to tackle their respective challenges seemed a high priority to Lithuanians and minority members I interviewed.

In light of the recognition of diversity in Lithuanian society, it would be inaccurate to describe the three factors as representing the perspective of the majority vis-à-vis other ethnic groups. In following the diversity criterion for selecting the sample of participants, members of minority groups were included in the study (out of the 42 participants, 6 were Russian, 4 Polish, 1 Belarusian, and 1 Ukrainian). A closer examination of the *sympathetic discontent* factor (B) suggests that this discursive position could easily be interpreted as consistent with a minority-centered view of the challenges ahead. Again, Q-methodology is not designed to provide insights about the representativeness of the uncovered factors with regard to specific subject groups but the qualitative analysis that it does allow provides some important clues about the nature of the minority rights discourse in Lithuanian society. *Sympathetic discontent* provides both a

comprehensive interpretation of the minority rights questions and shows a strong preference for targeted corrective measures, which can benefit the majority as much as the minorities.

The numerous conversations I held with members of the Russian-speaking minority are particularly telling when it comes to the overlap between the *sympathetic discontent* factor and the views held by this minority. More dispersed than other ethnic groups, Russian speakers face the challenges of attempting integration into Lithuanian society while preserving their identity and cultural heritage. Three students I interviewed all went to Russian minority schools the quality of which they were satisfied with, they all secured a spot at Vilnius University, and all three have ambitious plans for their future.<sup>297</sup> The shared ethnic background and early life experience, however, did not seem to condition perfect overlap in views on the situation of the Russian minority in Lithuania.<sup>298</sup>

Viola hopes to continue her studies in Russia and feels that the majority attitudes towards ethnic Russians, while not confrontational, are lukewarm at best. She worries that whenever members of this minority wish to express their culture, they risk being called Russian nationalists. Her friend Karina feels that whatever tensions remain between the two groups can be traced to older generations of both Russians and Lithuanians and she sees the danger of these attitudes being passed on to the youth. Immediately, however, she adds that the challenges faced by young people of Russian and Lithuanian descent are practically identical, as they balance career and life goals that can lead them to Western Europe with the desire to maintain traditional ties to home, regardless of their native language. Finally, Julia believes that Russians may sometimes *think* that the Lithuanians do not like them but this is no longer the case. She points

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<sup>297</sup> The three conversations were conducted back to back and individually.

<sup>298</sup> The observation that in the Baltic context the difference within ethnicities are often greater than those between them was previously made by Richard Rose and William Maley, "Nationalities in the Baltic States: A Survey Study," *Studies in Public Policy*, no. 222 (1994): 4.

out that the Lithuanian majority is not afraid of Russians and has embraced their integration into economic and political life – instead, any lingering fear is directed at Russia as a country and it has been exacerbated by the powerful neighbor’s military forays into other former Soviet republics (Georgia). As far as the Russian minority is concerned, Julia thinks they could show more interest in advancing their own culture. Taken together, the positions presented by the three young Russian-speaking girls reflect an awareness of the past, concern with the present and relative optimism about the future that also characterizes *sympathetic discontent*. In addition, it betrays the diversity of opinions within the minority group that has the potential of pre-empting extreme positions and leaving the door open to compromise solutions, without “dwelling on history.”

Finally, Factor C, *distant individualism*, also displays a balance of overlap with other factors and a unique focus that reflects an essential component of Lithuanian discourse about minorities. As the label suggests, it reflects lower intensity of involvement in the minority rights debate. Rather than ignorant of the challenges, this factor is better described as impatient with the slow progress, as the two most strongly affirmative statements suggest. The individualist element of this opinion pattern is telling in that it parallels western-devised priority ordering of issues (inclusion of individual citizens will result in the inclusion of minorities as groups). The sentiment is confirmed by the significance attributed to economic factors<sup>299</sup> in conditioning both majority and minority preparedness to move past group-based squabbles into a world where the public and private spheres remain separate. Ultimately, this aspect of distanced individualism offers the potential both for comparing the Lithuanian discourse with the Slovak one and for linking its evolution to the EU integration process that the countries have been subjected to.

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<sup>299</sup> In fact, distanced individualism is the only factor to place the two statements indicative of the significance of economic factors into the affirmative range of the scale provided.

## Conclusion

The primary objective of the comparison between Slovakia and Lithuania has been to look to country-specific patterns in minority rights discourse. The detailed analysis of the parallel country stories can shed light on the role that societal attitudes play in aligning domestic priorities with the minority rights standards stipulated by international treaty documents (the Framework Convention and the Accession Treaty with the EU). Thus, even though the details of the discourse in Slovakia are not directly comparable to those uncovered in Lithuania (as a function of the study's design), they share a reference point in the minority rights norm that the two societies encountered as candidates for EU membership. Beyond the immediately apparent difference in the extent to which Slovak minority rights discourse is conflicted and the Lithuanian one is consensual, we can examine the detected factors for an overlap with the individualistic norm endorsed by EU's institutions. The extent of this overlap, I have argued, determines the likelihood that the incoming European norm will meet with success.

In the case of Slovakia, the only factor that contains unambiguous references to the principles of west-European liberalism is *informed pragmatism*. It allows ample room for addressing the concerns of individual minority members and appears prepared to abandon the conceptualization of inter-ethnic tensions as a problem involving collectivities. The two remaining discursive positions, however, more than counter the tolerant and inclusive tendency revealed by the first factor. Especially the opinion cluster characterized by *intolerant nationalism* raises concerns about deeply rooted societal resistance to the inclusiveness advocated by the Council of Europe and its allies. It is true, that the discursive map that the q-methodology studies generate offers us only a glimpse of which discursive positions are *possible* (as opposed to probable). In an idealized deliberative society one of them would have as good a chance of



prevailing as the other.<sup>300</sup> Yet, power is an important element of such exchanges. When the Slovak prime minister, parliament speaker and the president support the decision to bar the Hungarian president from entering a south Slovak town on a private visit (during which he was to unveil the statue of a medieval Hungarian king and a saint) the endorsement of extreme positions is likely to dominate the discussion.<sup>301</sup> Few things could have been more dramatic and resonate more with substantial portions of the Slovak electorate than turning back the Hungarian head of state half way down the bridge over Danube. "Discourses help condition what is possible and likely in terms of political development, while political development can change the terms of discourses."<sup>302</sup> The political realities surrounding the mix of positions uncovered in Slovakia, however, leave little room for optimism. If informed pragmatism was allowed to dominate prior to EU accession, it has been followed by what some have referred to as a populist backlash,<sup>303</sup> which added fuel into the nationalist fire.

In Lithuania, the most strongly individualistic discursive position that corresponds with the Strasbourg inspired approach to addressing minority tensions is the one labeled *distanced individualism*. Rather than opposed by the other factors, it is consistent with the opinions extracted to formulate *sympathetic discontent*, and even *self-conscious nationalism*. To the extent that the integration of minorities in Lithuania represents a challenge, the group-based conceptualization provides a platform for negotiating a solution acceptable to all (as in the case of the "zero-option" approach to citizenship law in 1990). The Lithuanian story thus offers an example of how the collectivity-based understanding of minority rights can not only be made

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<sup>300</sup> Juergen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: The MIT Press, 1996).

<sup>301</sup> Marek Vagovič and Martina Kováčová, "Ešte Sa Vrátim, Odkazuje Nežiadúci Maďarský Prezident [I Will Be Back, Says the Unwanted Hungarian President]," *SME*, August 21 2009.

<sup>302</sup> Dryzek and Holmes, *Post-Communist Democratization: Political Discourses across Thirteen Countries*, 6.

<sup>303</sup> Rupnik, "Eastern Europe: The International Context."

consistent with the calls for real equality among citizens, but also to make that equality sustainable. By realizing minority members' rights as individual citizens, Lithuania was able to guarantee also their right to a distinct cultural identity or education in the minority language (both of which contain a significant element as collective rights). Neither Lithuanians, nor the minorities residing in this country saw EU accession and adoption of the norms that define the membership, including those concerning minority rights, as contradicting their goals.<sup>304</sup> The change chronicled there thus embodies an articulation of the norms already present in Lithuania and while much work still remains, the shared ground allowed for a successful start.

The role of EU influence has been more controversial in Slovakia. At first a poster child for the membership conditionality mechanism, the country has by now become emblematic of the miscommunication between Brussels and candidate countries. In this context, the particularities of the accession process become relevant. Reading the Annual Report on equality and discrimination issued by the European Commission,<sup>305</sup> and comparing it with the *actual* ethnic minority challenges in Slovakia, we find a misalignment of anti-discrimination policies promoted by the EU and the claims made by ethnic collectivities in the candidate countries. The key difference is one in emphasis: it is on *individual* rights in the case of the former and on *collective* rights in the claims of the latter. As Douglas Sanders makes clear in his comparison of the various right types, "groups suffering discrimination have a tendency to assert a collective character, simply as part of the struggle."<sup>306</sup> Not allowed to speak in "group" terms prior to

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<sup>304</sup> Interviews with Petras Austrevicius, Tatjana Michniova and Larissa Dimitrieva.

<sup>305</sup> "Smer Suspended from Pes," *The Slovak Spectator*, October 13 2006. On the whole, the minimum institutional requirements worked for keeping even countries facing severe structural constraints on board, without compromising the underlying principles and democratizing objectives of the enlargement process. In their efforts to demonstrate awareness of the local context, the EU officials de facto opted for double standards, to salvage the principles of conditionality and institutional rigidity.

<sup>306</sup> Douglas Sanders, "Collective Rights," *Human Rights Quarterly* 13, no. 3 (1991): 369. This difference may be at the root of the ambiguity with which the minority rights norm developed in the West (and reflected in the EU-required institutional solutions) has been received in Eastern Europe.

accession, both sides of the minority-majority divide came to revisit these arguments in a way that has been inherently exclusive and thus bears dangers for the quality of Slovak democracy in the long-run.

The European Commissioner responsible for enlargement, Günter Verheugen declared in the year 2000:

Enlargement resolves sometimes centuries-old conflicts, it clears up border disputes and defuses minority issues. It is obvious that such achievements demand a positive response and that those who have worked for them must not be let down.<sup>307</sup>

The latter half of his statement is certainly true – progress on matters as complex as guaranteeing minority rights should be encouraged and appreciated. The problem lies in the Commissioner's insinuation that "centuries-old conflicts" can be done away with by one stroke of a pen signing the Accession Treaty. Assumptions like this underpinned the indiscriminating introduction of a version of minority rights protection that was not always consistent with pre-existing conceptions of minority rights in Eastern Europe. Having said that, the Lithuanian example illustrates that despite long-standing tensions and the potential for them to flare up again, it is possible to introduce the new norm, while respecting minority-specific demands and assuaging everyone's insecurities.

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<sup>307</sup> Günter Verheugen, "Speech: Enlargement Is Irreversible," <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/00/351&format=HTML&aged=0&language=EN&guiLanguage=en>.

## CHAPTER 5: STRATEGIC APPROACHES TO INTERNATIONAL NORM EVOLUTION: ROMA RIGHTS AS HUMAN RIGHTS IN THE EU

Roma rights benefit when high-profile Romani activists and organizations take on human rights issues, jointly with their anti-discrimination and anti-racism efforts.

Roma rights [are] harmed when we – the now broad and growing coalition of groups working to end racism against Roma in Europe – avoid these issues.<sup>308</sup>

The above statement may seem obvious – how *can* one fight discrimination and racism, without direct references to human rights. In the context of ethnic relations in Eastern Europe, however, the two avenues of advocacy are often viewed separately, with human rights affecting individuals and anti-discrimination/anti-racism aimed at groups. The study focusing on Lithuania and Slovakia revealed a similar division of labor in minority rights advocacy. It detected a difference (though uneven across countries and minority groups) between the collective rights demands by minorities in the new member states and the individual-rights emphasis by EU's institutions. Yet, there are still some unanswered questions concerning the work of minority advocates in Europe and the degree to which they are aware of the gap between the various conceptualizations of ethnic minority rights. Do they seek to shape it to their advantage? Does the gap interfere with efforts to extend their reach to the European level? How do they reconcile the group-based claims, a need to combat stereotypes and other challenges facing the Roma as a community with the mainly legal avenues available in remedying the status of this minority? And finally, is it possible to map their strategies in the typological framework proposed here?

The present chapter looks at how these actors have seized the opportunities to (re)interpret and (re)negotiate the position of ethnic minorities. Selectively using EU institutions

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<sup>308</sup> Claude Cahn, "The Unseen Powers: Perception, Stigma and Roma Rights," *Roma Rights Quarterly*, no. 3 (2007): 8. Claude Cahn worked for 11 years for the European Roma Rights Centre.

as their ally, as a guide in formulating their claims, but also as a target of their advocacy initiatives, non-governmental organizations representing minorities have carved out a niche translating the minority rights talk directed eastward from Brussels, and back.<sup>309</sup> I will argue that certain frames have proven more effective than others. The universal/constitutive norms exemplified by human rights represent the “ideal” norm with the highest likelihood of promotion success. I now extend this reasoning to suggest that if a norm misses the necessary attributes, it pays for the actors involved in its proliferation to make sure it acquires them and to seek a corresponding re-framing of the issue.

Embedding this argument in the typology of international norms that differentiates between them based on their palatability to governments and societies, I will argue that the attributes of each norm type influence the set of tools available to NGOs. These organizations look for most viable avenues for norm promotion and we can expect them to compete for support of governments on the one hand and societies on the other. As they do this, they must consider the constraints specific to each norm and to the institutional context in the EU. To empirically test these propositions, I will turn to the case of Europe-wide efforts to integrate the Roma minority. The goal is to provide explanations for the increasingly appealing and widespread redefinition of *minority rights* in *human rights* terms.

This chapter represents a contribution to both the international norm literature and intra-EU politics research as it explores the role of the institutional environment mediated by the nature of the norm. Existing accounts that examine similar interactions tend to privilege the

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<sup>309</sup> The concentration on NGOs is intended to strike the middle ground between the state-centric approach that dominates the norm promotion literature and “going micro” in focusing on elites and individual decision makers. For an example of the latter strategy see Alastair Iain Johnston, “Treating International Institutions as Social Environments,” *International Studies Quarterly* 45, no. 4 (2001).

influence of the institutional structures over that of the norm content in their causal stories.<sup>310</sup> In fact, other than differentiating between issue areas, little is said about the nature of the normative change involved in Brussels-mandated policy shifts. My argument, by contrast, places the norms at the center of the causal story suggesting that the bounded malleability of norm content provides the necessary wiggle room for successful convergence of approaches to minority rights across EU member states.

The empirical section will be organized around a three-way comparison of approaches to the minority rights question by EU institutions, the NGO/non-profit sector, and the national governments (at all levels, with a focus on Slovakia). I will outline the differences between them and lay out the options available to the Roma advocacy groups as the key actors engaged in facilitating communication with the other stake holders. The goal is to document the effect that NGO involvement at the EU level has had on these organizations' willingness to adjust the focus in Roma rights advocacy. I will argue that the key determinant of the shift from collective rights to individual rights claims was the desire for improved communication and ground-level changes. Ultimately, this flexibility affects the potential for success of the NGO efforts and shapes the game of survival that minority rights advocates play every day.

### **Bringing Norms and Those Who Promote Them Back In**

The inadequacy of the rather superficial measures taken in former EU candidate countries to comply with accession requirements in the area of minority rights has taught two key sets of actors some important lessons. First, with an eye on future enlargement(s), the European

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<sup>310</sup> Krook and True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality."

Commission is now careful not to leave anything to chance in its negotiations with candidate countries in the Balkans. Meanwhile, non-governmental organizations active in the fight for minority integration into Eastern European societies have sought to address the disconnect between the needs of minorities, the (in)tolerance of majorities, and the hollowness of demands from Brussels. Eastern European minorities have certainly benefited from the attention that the accession process drew to their often precarious situation. EU's legal system, however, is oblivious to one important element on their agenda: collective minority rights. EU officials are struggling to understand the group-identity based claims as much as the perceived threat that majority populations often associate with minority demands voiced as those of an entire collectivity. In short, when it comes to achieving tangible advances on ethnic minority rights questions, it is the NGO advocates who grapple with 1./ the inadequacy of passively waiting for the minority rights norm to "diffuse" and 2./ the counter-productivity of holding on to localized versions of the norm that often shelter deep-seated prejudices.

One instance of an ongoing misunderstanding concerns minority language use. To minorities this is a *group* right that goes beyond permitting individuals to speak whatever language they choose, especially as it concerns the requisite instruction of minority languages in schools and their use in public spaces or official communications. Yet, policy and legal instruments available at the EU level only permit treating this issue as one of endangered language preservation, or one concerning individual citizens, i.e. parties in potential court cases. Not only does this limited perspective leave member states a free (or unsupervised) hand in devising minority policy, it also constrains appeal options for those harmed in the process. In other words, the EU treatment of the minority question is ill-suited for handling the injustice experienced by minorities. Nor does it address the sense of danger perceived by majorities.

Ironically, both sides fear that their very existence as a *group* is being threatened. The problem lies in the fact that the EU has called for respect for minority rights without stipulating what this actually means. Thus, in the case of Hungarians in Slovakia, the permission to drop the Slovak-derived suffix “-ova” at the end of female names has been passed up by Hungarian women. Instead of taking advantage of greater flexibility accommodating cultural specifics, the women were worried about being singled out and potentially discriminated.<sup>311</sup> Paradoxically, if judged by the EU standards, the appropriate law has been in place. Yet, the underlying sentiment and minority-majority tensions remain unaddressed.

New member governments have eagerly adopted the shallow EU discourse on minority rights as a seamless way to both comply with external demands and to avoid delving too much into this politically sensitive subject. Such inclinations by those officially responsible for fair treatment of minorities resulted in shifting the burden of achieving tangible improvement in minorities’ status onto NGOs advocating their rights. Thus, initially seeking to mostly influence and perhaps facilitate state efforts to better integrate Eastern Europe’s minorities, these organizations suddenly found themselves at the center of the policy formulation process, often even working to reverse counterproductive government initiatives. They were also faced with the challenge of communicating simultaneously with EU institutions, their respective governments, as well as their “client” minority groups. It is this closeness to specific minority communities that made the revisions in NGO approach to minority rights challenging and ultimately surprising.

In this complicated institutional environment, what would have been the motivation for reframing the norm in Eastern Europe? First, we have to acknowledge that in the course of EU accession, the candidate countries did not have any opportunity to cut corners on minority rights. What they were able to do was to take advantage of the vague phrasing in the accession criteria

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<sup>311</sup> Author interview with Kálman Petoetz, Forum Minority Research Institute, Šamorín, Slovakia, March 18, 2009.



from Copenhagen (1993), which conflated minority rights with human rights. The pressure of conditionality, however, ceased upon candidates' entry into the Union, as did much of the leverage that Brussels had over governments in Eastern Europe on this issue. Following accession, two existing agendas – the EU individual-rights focused version that governments sided with, and the NGO-promoted version that followed directly from the group rights claims by the minorities – stood head to head with no authority to adjudicate which should prevail.

The strategic interests of NGOs active at the EU level led them to revise their approach in the interest of accomplishing real change on the ground, while not foreclosing the options of EU funding and cooperation. Although these organizations' goals and means of achieving them seemed closely tied to the demands of the communities they represented, they proved the most flexible in the end. This revision of strategy occurred independently of any shifts in the attitudes by the affected groups – minority or not. The task of addressing deep-seated ethnic tensions, after all, still lies ahead of the actors involved in this struggle. Instead, the impetus for the increased flexibility in approaching the problem of integrating ethnic minorities, including the Roma, came from the interaction with EU's institutions. Oblivious as EU officials have been to the complexities of inter-ethnic relations in Eastern Europe, their communication with grass-roots stakeholders affected the latter's preparedness to negotiate the content of minority rights.

Yet, we cannot write off the resulting reformulation of Roma rights as a simple case of institutional isomorphism. That would imply that a dominant actor's agenda permeated all discussion on the subject. Although the hegemony of EU ways was detectable in Eastern Europe, such explanations may apply to the behavior of new member state governments but not the non-governmental sector. The reason behind this difference can again be found in the close NGO ties

to individual minorities, which diminished the potential for “decoupling”<sup>312</sup> (formal change without ground-level commitment) that was relatively easy for foreign ministry officials to do. Being embedded in a community made the NGOs more attuned to its particular challenges but also accountable for delivering promised improvement. Similarly, institutional accounts pointing to specific opportunity structures at the EU level are incomplete, as they focus merely on varying methods of advocacy, rather than changes in the content of the norm itself.<sup>313</sup> Finally, the international relations scholarship that has chronicled the reframing of previously faltering norms in human rights terms can only provide partial explanations of what happened with minority rights in the EU of 27.<sup>314</sup> As the empirical study of Roma rights will show, the existing norm was redefined altogether, rather than merely having the human rights frame superimposed on it. The theoretical approach presented here takes into consideration the interaction between minority representatives and their social and institutional environment, providing the dynamic element necessary to document and explain the real shift in minority rights advocacy.

According to minority NGOs’ initial mission, the goal was to improve the status of the marginalized groups without increasing intra-societal tensions. One way of achieving this would be to increase the norm’s appeal to those resisting it domestically. Even if this change should occur for instrumental reasons at first, such as EU funding or approval, the relevant behavior patterns and official agendas can be internalized over time.<sup>315</sup> Regardless of any disagreement

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<sup>312</sup> Meyer et al., “World Society and the Nation-State.”

<sup>313</sup> Gary Marks and Doug McAdam, “On the Relationship of Political Opportunities to the Form of Collective Action: The Case of the European Union,” in *Social Movements in a Globalizing World*, ed. Donatella Della Porta, Hanspeter Kriesi, and Dieter Rucht (Houndmills: Palgrave Macmillan, 1999).

<sup>314</sup> Amy Gurowitz, “International Law, Politics, and Migrant Rights,” in *The Politics of International Law*, ed. Christian Reus-Smit (Cambridge: Cambridge University Press, 2004); Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*; Richard Price, “Reversing the Gun Sights: Transnational Civil Society Targets Land Mines,” *International Organization* 52, no. 03 (2003); R. Charli Carpenter, “Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks,” *International Studies Quarterly* 51, no. 1 (2007).

<sup>315</sup> Johnston, “Treating International Institutions as Social Environments.”

about the most desirable means of achieving this goal, detectable improvement is something all actors could agree on as a desirable goal. And, unlike some member state governments, the EU and the NGOs were actually committed to enacting tangible change, rather than engaging in window dressing (or, again, decoupling) activities for short-term political gain, domestic or international.

The second justification for bringing the EU-level and grass-roots informed conceptualizations of minority rights closer together is as simple as giving the relevant stakeholders a common language. Again, matters were more complicated than the European Commission imposing its approach on politically weaker actors. Instead, the policy context and underlying power structures within the Union arguably enhanced the convergence of approaches. The European Commission and the European Parliament, which were the institutions most engaged on the minority rights front before and after the Eastern enlargement, simply do not wield tools strong enough to address member-state minority problems on a case-by-case basis. Instead, the EC and EP levers concentrate in the area of broader discrimination protection. Without implying that the goal was for NGOs and EU's institutions to team up against member state governments, we can say that a degree of interest alignment was at work.

Using this lens of policy-specific interaction between actors at various levels of decision making, we can see the convergence of minority rights approaches as a case of norm streamlining, rather than norm diffusion. Local norms were adapted to correspond better to the EU discourse, rather than being replaced by it altogether. The NGOs chose to abandon the constraining national-level frames that interfered with knowledge sharing, cooperation, and lesson transfer throughout the Union. Yet, they never lost sight of the ground-level challenges impeding advances on minority inclusion. Elements of the human rights framing were adopted

and made comprehensible to members of individual minorities (and majorities). At the same time, both groups' unique apprehensions were recognized as valid but resolvable. The following section will provide the evidence for this argument and substitute tangible examples for the rather abstract language used to characterize the minority rights norm transformation thus far.

## **Roma Rights as Human Rights**

To deal with the potentially expansive empirical work needed to analyze the process of the minority rights norm evolution, I will focus on the Roma minority as a case that has posed a shared challenge for the largest number of EU members (old, new, and prospective).<sup>316</sup> The vulnerability of Europe's Roma has necessitated action by NGOs and governments alike, while eliciting responses from the European Commission, the EP, and the Fundamental Rights Agency in Vienna.<sup>317</sup> At the same time, there is sufficient variation in the country- and EU-level treatment of this minority to render the apparent convergence of the different minority rights discourses surprising. I will examine the role played by Roma rights advocates in this process. I believe they ought to be treated as motivated independent actors with unique interests, which, through interactions with EU priorities, have the potential to make these NGOs less grass-roots but no less effective than their declared mission.

The Roma are the largest ethnic minority both in the EU and in several of its member states.<sup>318</sup> Still, they wield the least political weight, economic power, and social influence.<sup>319</sup>

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<sup>316</sup> "Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion – Progress Report 2008-2010," Commission Staff Working Document (Brussels: European Commission, 2010).

<sup>317</sup> EP docs: P6\_TA(2009)0117, P6\_TA(2008)0622

<sup>318</sup> The minority's size in the EU is estimated at 10-12 million. Slovakia and Hungary are countries where the Roma represent the largest minority. The Roma are also among the most numerous minorities in Romania, Bulgaria and the Czech Republic.

This situation is often explained by turning to the historic trajectories mired with exclusion and discrimination, culminating in the Holocaust and extending into the communist period. The post-communist era has been marked with further disruption of the group's traditional community values and cultural heritage.<sup>320</sup> This impacted Roma ability to assert their identity and interests. Eastern Europe's Roma often live in destitute conditions, without access to jobs, education, and even basic infrastructure or health services. Notwithstanding the sometimes exaggerated differentiation among members of the minority, where better integrated sub-groups and individuals are pointed to as (rare) success stories, the situation of the minority is alarming.<sup>321</sup> This is especially apparent in comparisons with the living conditions and opportunities available to the majority, as well as other minorities. The Roma have faced an uphill struggle not only in carving out space for their identity vis-à-vis these groups but also in the competition for jobs and resources. Despite these challenges, the responsible authorities in Eastern Europe have downplayed the seriousness of the issue or outright relied on international actors to provide resources and ready-made solutions.<sup>322</sup> Winning governments over to the side of active involvement therefore became a core goal of NGOs and international organizations. At the time of Eastern EU enlargement, the situation of Roma became the litmus test for EU candidates' commitment to respecting democratic principles more generally.

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<sup>319</sup> "The Situation of Roma in an Enlarged European Union," (European Roma Rights Center, European Roma Information Office, European Commission, 2004).

<sup>320</sup> Elena Gallová Kriglerová, Lucia Najšlová, and Aneta Világi, *Odpoved' Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku. [The Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia.]* (Bratislava: Research Center of the Slovak Foreign Policy Association, 2009), 46.

<sup>321</sup> "Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion – Progress Report 2008-2010," 5. "The Situation of Roma in an Enlarged European Union."

<sup>322</sup> Kriglerová, Najšlová, and Világi, *Odpoved' Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku. [The Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia.]*, 30; "Attachment to Government of Sr Resolution No. 153/1991 - Principles of Sr Government Policy Concerning the Roma [Príloha K Uzneseniu Vlády Sr Č. 153/1991 - Zásady Vládnej Politiky Sr K Rómom]," in *Government Policy and the Roma [Vládna Politika a Rómovia]*, ed. Alena Kotvanová, Szép Attila, and Michal Šebesta (Bratislava: SIMŠ, 2003).

Slovakia was the EU applicant with the most catching-up to do in this regard. It will be the country case anchoring the discussion of national-level policies below. The complexity, contentiousness and high salience of the issue in this country make it a particularly difficult test case for the argument that Roma rights NGOs were prepared to move beyond localized conceptualizations of the norm.

### *European Institutions and the Roma*

Within the EU, the minority rights agenda is dominated by the wide gap between ambitious policy goals or rhetoric and the potential for effective enforcement (legal or monetary) of this evolving norm. In general, the EU keeps an eye on member state Roma policy but has limited levers to influence it directly. As a result, the various monitoring reports issued in Brussels describe a rather symbiotic relationship. The carefulness with which the European Commission treads around national-level agendas on this politically sensitive issue is all too familiar. As observers of the suspiciously non-contentious relationship have noted, positive obligations that could ensure “substantive equality” for the excluded Roma minority are missing.<sup>323</sup> The exchanges between Brussels and national capitals tend to be dominated by encouragement of even the most modest positive moves, not open scolding or unequivocal demands for change. While such a casual approach may be acceptable in some policy areas, it is hardly affordable when treatment of vulnerable groups is at stake. According to a Minority Rights Group briefing, Roma communities remain at the mercy of the unfavorable political

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<sup>323</sup> Galina Kostadinova, "Substantive Equality, Positive Action and Roma Rights in the European Union," in *Briefings* (London: Minority Rights Group International, 2006).

climate within the member states, which is unacceptable when it comes to the realization of human rights.<sup>324</sup>

It is a fact that the European Commission has little legal groundwork to lean against. The most often cited instrument is the “Racial Equality” Directive 2000/43EC but in its focus on race it falls short of addressing the unique situation of the Roma. Discrimination of this group extends beyond the reach of the directive and goes deeper than job access or service provision for individual citizens. At the proposal and report-writing level, this fact seems well recognized. The problem lies in a disconnect between the rhetoric applied by East European governments, which (for better or worse) focuses on responding to Roma needs as a group<sup>325</sup> and the EU legal framework that can only accept claims of discrimination brought forward by single individuals. Along these lines, and exemplifying the persistent miscommunication on the subject, the pre-accession “democratic” criterion was too broad and vague, especially as the integration of minorities, including the Roma, was concerned. This vagueness was not without impact on the outcome of membership conditionality and the accession process more generally: minority rights policy has been stalled with half-results. On a more practical level, EU accession did not result in improved living conditions and social inclusion of the Roma minority.<sup>326</sup> Overall, minority rights

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<sup>324</sup> Ibid., 1. The briefing continues to describe the legal ramifications of this arrangement: “the Racial Equality Directive (Article 5) *allows*, but does not *require* member states to maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin, with the aim of ensuring full equality in practice. Under EC law, positive action is regarded only as an exception to the equal treatment principle.” p. 5.

<sup>325</sup> Kriglerová, Najšlová, and Világi, *Odpoved' Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku. [The Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia.]* citing numerous speeches by government officials, including the deputy prime minister for minorities.

<sup>326</sup> Author interview with Lýdia Gabčová, Open Society Institute – Slovakia, January 2009 “The Situation of Roma in an Enlarged European Union.”; Kostadinova, “Substantive Equality, Positive Action and Roma Rights in the European Union.”

activists have found the EU Reports superficial in the choice of issues covered, and in their relevance for minorities.<sup>327</sup>

We can describe the inefficacy of EU monitoring as a problem of definition regarding the nature of Roma exclusion and the level at which it can be addressed most effectively. According to a recent Commission Staff Working Document,

we are committed to closing the unacceptable gaps in welfare and living conditions that exist between Roma and the rest of society as well as putting an end to the cycle of poverty and exclusion that many Roma find themselves in. We are concerned about extreme human rights abuses in education, housing, employment and health care systems, about increasing anti-Gypsyism and the multiple discrimination that Romani women face across Europe. We believe that the European Union and its Member States have a shared responsibility to promote Roma inclusion and uphold the fundamental rights of Roma as European citizens.<sup>328</sup>

Despite these goals, the Commission pressure has not had the desired effect on member states, who are content to passively respond by demanding external assistance. Meanwhile, the EC claims that there is “obviously an implementation gap at the national, regional and local level” underscored by “a lack of political will, a lack of strong partnerships and coordination mechanisms.”<sup>329</sup> The same document highlights the increased openness to mainstreaming the specific issues of Roma into policies and programs.<sup>330</sup> In other words, the Commission has been settling for the promise that the very limited change holds for the future. In such a low-pressure

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<sup>327</sup> Snježana Bokulić and Galina Kostadinova, "Pushing for Change? South East Europe's Minorities in the EU Progress Reports," (London: Minority Rights Group, 2008), 4.

<sup>328</sup> "Roma in Europe: The Implementation of European Union Instruments and Policies for Roma Inclusion – Progress Report 2008-2010," 4.

<sup>329</sup> Ibid., 3.

<sup>330</sup> Ibid., 28.



environment, it is not surprising that member state governments were so slow to move beyond rhetoric and confront the exclusion of Roma head on. Ironically, the EU insistence on tangible change had more teeth prior to Eastern Europeans' entry into the Union. As one Roma rights advocate put it: "I wish conditionality never ended."<sup>331</sup> The following section will trace the development of government policy towards the Roma, the influence of membership conditionality on the degree of official commitment to change, as well as the missed opportunities, which, ironically, constitute the bulk of the accession legacy.

### *National-Level Policy on Roma*

Although country-level differences in the relative size and specific vulnerabilities of the Roma minority have influenced the solutions encouraged by the EU and occasionally adopted by governments, there are some unifying patterns that allow us to discuss government policy in Eastern Europe under one heading. Measures to combat Roma exclusion have been developed along two lines – socio-economic and identity-based political. They each correspond to different sets of demands. The former is inspired by a broader desire to combat unemployment, poverty and regional underdevelopment – this particular line is especially encouraged by EU institutions. The second avenue for approaching Roma exclusion targets the “ghettoization” of their communities, reinforced by ethnic tensions with the majority population. This set of challenges is most often highlighted by Roma rights NGOs, as necessitating an additional layer of protection.

Governments tend to pick and choose between various aspects of the Roma inclusion agenda, sometimes seeking to please external actors, sometimes those at home. This dual

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<sup>331</sup> Author interview with Andre Wilkens, Director, Open Society Institute – Brussels, July 2007.

influence often generates conflicts in terms of policy prioritization, as well as the time frame for assessment of progress. As a result, government policies often lack coherence and even coordination among ministries of the same executive can pose a problem.<sup>332</sup> According to a report by the European Roma Information Office, national action plans targeting socially disadvantaged groups lack “clear and measurable objectives concerning the Roma, limiting themselves to just a handful of statements and purposes which do not have any follow-up in practice.”<sup>333</sup>

Much like the proverbial cooks that can spoil the broth, the multitude of arenas in which the Roma question is being tackled has led to considerable confusion regarding the competences, accountability, and financial resources for Roma inclusion programs. Some countries (Bulgaria and Slovakia) have as many as three agencies dealing with this policy issue – one directed at EU audiences, one to facilitate multilateral efforts (such as the Decade of Roma Inclusion), and one intended as a body visible / available to domestic groups, including the Roma themselves. Such a lack of coordination and coherence in the practice of Roma policy formation merely reflects the absence of a well-defined agenda. This, in turn, is the outcome of the political sensitivity of the issue, paradoxically underscoring the pressing need to address it effectively. As one watch-dog organization described it, the inconvenient trade-off lies between government commitment and fear of responsibility.<sup>334</sup>

Hopes were high when a multi-country initiative supported by the Open Society Institute and the World Bank brought together governments from across Eastern Europe to coordinate attempts at integrating the Roma into their respective societies. In several EU member

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<sup>332</sup> Author interview with Martin Jurík, Roma Plenipotentiary Office, Slovakia, January 2009.

<sup>333</sup> Guillermo Ruiz, ed. *Equality Mainstreaming: Analysis of National Action Plans on Social Inclusion with Regard to Roma* (Brussels: European Roma Information Office, 2008), 4.

<sup>334</sup> Iulian Stoian and David Mark, eds., *Decadewatch Romania Report: Mid Term Evaluation of the Decade of Roma Inclusion* (Bucharest: Roma Civic Alliance of Romania, 2010), 16.

countries,<sup>335</sup> the Decade of Roma Inclusion 2005-2015 (the Decade) was to provide guidelines and useful benchmarks for government-sponsored programs. The goal was to track the improvement facilitated by the Decade initiative. Ironically, however, the measures have proven most useful in detecting reversal of initial progress and revisions of optimistic forecasts for the future.<sup>336</sup> Overall, the policy measures undertaken constituted positive steps, but they were not enough to tackle the core causes of long-term exclusion and segregation faced by Roma.<sup>337</sup>

Slovakia has faced the greatest challenge in making the Decade a successful initiative. Causes and symptoms of these difficulties lie in the pre-accession failure to integrate national minorities, including but not limited to the Roma. In addition, the post-accession political developments reshuffled the prioritization of the minority rights question and explain the backtracking on Decade priorities. In its regular report from 2000 the European Commission noted that “in spite of some progress recorded, there appears to exist, in general, a gap between the good intentions and their actual implementation. As a result, practical improvement in the daily life of the minorities is very minor if not unnoticeable.”<sup>338</sup>

For a brief time, diligent work to meet the requirements of EU membership introduced the Roma situation into mainstream political discourse and legislative steps were taken to remedy the deficiencies. This enthusiasm, however, died down after accession and reached new depths following the change of government in 2006, when Slovak nationalist parties entered the coalition. As early as 2004, Slovak political leadership, in commenting on anti-reform protests, revealed a persistent reluctance to accept responsibility for the minority situation and to

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<sup>335</sup> Bulgaria, Czech Republic, Hungary, Romania, Slovakia, and most recently also Spain. Other countries include some candidates for EU membership: Albania, Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia.

<sup>336</sup> "Decade Watch: Results of the 2009 Survey," (Budapest: Decade Watch, 2010), 9-10.

<sup>337</sup> Ruiz, ed. *Equality Mainstreaming: Analysis of National Action Plans on Social Inclusion with Regard to Roma*, 4.

<sup>338</sup> Regular Reports on Slovakia, 2000, [http://europa.eu.int/comm/enlargement/report\\_11\\_00/pdf/en/sk\\_en.pdf](http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/sk_en.pdf)

internalize the need for lasting solutions.<sup>339</sup> The empty regurgitation of the message from Brussels was followed by a haphazard approach to Roma inclusion. The indecisiveness and reactive nature of Roma minority policies continued, reflecting the conflicting commitments by the government: to EU institutions, to nationalistically inclined voters, and to the relentless but often under-resourced NGOs. The office of the plenipotentiary for the Roma minority became the canary in the mine, suffering most from the repeated revisions in the government's minority agenda.<sup>340</sup> Following the electoral turnover of 2006, the Slovak executive abandoned the multi-tiered projects launched by this office and reverted to addressing a narrowly defined socio-economic exclusion of the Roma minority.<sup>341</sup>

The inadequacy of past policies in tackling Roma exclusion is felt most directly by those working to implement and make sense of government policy at the local level. This has been the task of the regional offices of the Roma plenipotentiary. In my interviews at these institutions, the tension between government commitment to EU rhetoric and the wide range of Roma needs that do not respond well to a piecemeal approach became apparent yet again. The EU framing dominates the discussion. The need for equal treatment of individual citizens and a focus on poverty, education, social inclusion and human rights were mentioned as the main areas of focus since Slovakia joined the EU.<sup>342</sup> When the minority is singled out occasionally, it is not because of its unique vulnerabilities but because inappropriate generalizations about the group are made. At the same time, regional offices of the Roma plenipotentiary struggle with the excessive leeway granted to their supposed partners in local government offices, swayed too much by

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<sup>339</sup> Kriglerová, Najšlová, and Világi, *Odpoveď Je Na Slovenku, Nie V Bruseli: EÚ a Integrácia Rómov Na Slovensku. [The Answer Is in Slovakia, Not in Brussels: EU and Roma Integration in Slovakia.]*, 36.

<sup>340</sup> Author interview with Lýdia Gabčová, Open Society Institute – Slovakia, January 2009. Also see *ibid.*

<sup>341</sup> *Ibid.*, 33.

<sup>342</sup> Author interview with Maroš Balog, Regional Office of the Roma Plenipotentiary in Banská Bystrica, Slovakia, January 2009.

public opinion. Along the same lines, the existence of inclusive legislation passed in response to EU pressure does not guarantee its effective use in everyday situations.<sup>343</sup> The minority rights norm, as applied to the Roma situation appears deeply imbued with pre-existing stereotypes that blind adoption of EU templates is unlikely to resolve. This is where the role of the non-governmental sector has gained significance and the following section will lay out the strategies that (variously successful) NGOs have pursued to make Roma inclusion more effective.

### *NGOs on Roma*

As the previous two sections made clear, opinions and competing agendas on Roma policy in Europe abound. The efforts of NGOs engaged in Roma rights advocacy are characterized by yet another layer of activity that generates additional content for the norm. In addition to staying current with the EU policy formulation process, they target the European Court for Human Rights (ECtHR), adjudicating based on legal instruments devised by the Council of Europe.<sup>344</sup> Interestingly, this well-developed human rights regime has inspired not only NGO action but also served as a resource for the European Union to borrow know-how in the course of the Eastern enlargement. The European Commission's contact with the Roma and other minorities has been mediated by national governments. By contrast, the NGOs engage the minority more directly, unceasing in their effort to communicate the real-life challenges that have been omitted from past policy measures. Arguably, the greater the gap between these conceptualizations of the minority rights norm concerning the Roma, the greater the potential (though not likelihood) for a redefinition of the issue and fusion of approaches into a more

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<sup>343</sup> Author interview with Ivan Mirga, Regional Office of the Roma Plenipotentiary in Spišská Nová Ves, Slovakia, January 2009.

<sup>344</sup> Not to be confused with the Council of the EU or the EU Council meetings.

comprehensive one. Closing this gap has been a key item on the NGO agenda over the past decade.

Despite the variation in emphasis between the EU and the Roma advocacy network, their participation in the Council of Europe human rights regime provides some shared perspective that can guide the efforts to reframe minority rights in Eastern Europe. At the minimum, court-oriented NGO efforts and EU emphasis on protecting rights of the citizens overlap in their definition of minority claims through the individual-rights lens. But the first step towards fostering a shared agenda is to identify the main points of misalignment. In its monitoring of EU anti-discrimination measures, the NGO sector has certainly done a large share of this work. One organization has argued that

while boosted by EU law, the anti-discrimination approach is narrow in scope... Bearing in mind the total marginalization of Roma from social and economic life, only a very limited group of relatively well-integrated Roma individuals will in practice be able to vindicate their rights before state's administrative bodies and courts of law...<sup>345</sup>

...so far, the EU has approached the question of social inclusion of marginalized communities, including the Roma, through a purely policy perspective, rather than as a matter of the fulfillment of human rights obligations. In that sense, we are witnessing a reformulation of the Roma question from a human rights issue into a policy goal issue.<sup>346</sup>

This has been particularly problematic at the level of program implementation, when Roma NGOs find it extremely difficult to justify their efforts vis-à-vis the (local) governments, majority populations, and often even the Roma minority itself. Despite the near-human rights

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<sup>345</sup> Kostadinova, "Substantive Equality, Positive Action and Roma Rights in the European Union," 2.

<sup>346</sup> Ibid., 7.

emergency situation, “the EU lacks an effective human rights enforcement body, and the vacuum so created leaves many individuals dangerously exposed to abuse.”<sup>347</sup> Presenting social inclusion as an economic and social right, rather than an essential human right,<sup>348</sup> leaves too much room for resistance and shifts the “burden of proof” onto the proponents of the minority rights norm, not those violating it. By contrast, casting Roma rights as a human rights issue can give it higher political priority, especially in a union of liberal democracies such as the EU.<sup>349</sup>

The combined approach to human rights and non-discrimination goes hand in hand with the advocacy toolkit selected by organizations targeting the EU as both an arena for Roma inclusion and as a source of legitimacy in battling domestic racism. The European Roma Rights Center (ERRC) has been the leading organization in pursuing strategic litigation to increase the salience of discrimination cases, as well as to set precedent that can influence minority policy in the future. Their effort has led to progress in providing unified anti-discrimination for Europe, bringing the jurisprudence of the European Court of Human Rights in line with the principles of EU antidiscrimination law. One core challenge that the ERRC has faced concerns their work with the Roma as a group, while concentrating its activities on court cases, which inevitably treat Roma as individuals. The organization concedes a degree of contradiction in its mission but emphasizes the *practical* effect of both discrimination and the fight against it.<sup>350</sup> If the Roma rights are violated because they belong to a group, these same rights can, and, in fact, should be defended with reference to the same group membership.<sup>351</sup> This attempt to reconcile the individual/collective divide to ensure comprehensibility of advocacy measures in both the

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<sup>347</sup> Ruiz, ed. *Equality Mainstreaming: Analysis of National Action Plans on Social Inclusion with Regard to Roma*, 13.

<sup>348</sup> *Ibid.*, 4.

<sup>349</sup> Kostadinova, "Substantive Equality, Positive Action and Roma Rights in the European Union."

<sup>350</sup> Interview with Savelina Danova, Research and Advocacy Officer, European Roma Rights Center, Budapest, June 20, 2007.

<sup>351</sup> Interview with Stanislav Daniel, ERRC Research and Advocacy Officer, Washington, DC, April 7, 2011.

affected communities and the EU is not unique to ERRC. The Open Society Institute has also employed strategic litigation arguing that although the Roma exclusion affects individuals the “biggest case are the Roma as a group.”<sup>352</sup>

In general, Roma rights NGOs are open to such privileging of the human rights frame<sup>353</sup> but the practicalities of minority-majority relations interfere. For instance, the least controversial part of the human rights regime concerning children’s rights is directly applicable to the Roma community but without attention to the specific challenges faced by the minority, the policies run the risk of skimming over crucial issues, as the EU approach had in the past.

Cultural and linguistic differences, long lists of deprivations, and on the whole, discrimination by community members, neighbours, welfare workers and state authorities contribute to increased risks of Romani children falling into very disadvantaged positions as far as the child protection systems are concerned.<sup>354</sup>

In other words, having the “standard” provisions in place does not guarantee protection for Roma children. By remaining grounded in the daily obstacles faced by Roma as a group but not losing sight of (individual) human rights more broadly, the activist network has been able to begin transforming the minority rights norm and even inform the EU perspective on the subject.<sup>355</sup>

For these NGOs, the goal is not simplifying EU’s and member-state Roma policy. Instead, they aim to make existing programs more effective and to apply lessons from past failures to improvement of future projects. The call for umbrella initiatives is one example.

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<sup>352</sup> Interview with Ann-Isabelle von Lingen, Open Society Institute, Brussels, March 25, 2009.

<sup>353</sup> In a more extreme phrasing of the position, the Roma focused Human Rights Monitoring Institute in Lithuania rejects the separation of human rights and minority rights. “if we understand the right of equality in substantive terms, minority rights are not needed at all.” Interview with Henrikas Mickevičius, Human Rights Monitorin Institute, Vilnius, Lithuania, October 1, 2008.

<sup>354</sup> Sinan Gökçen, “Protecting the Most Vulnerable,” *Roma Rights Quarterly*, no. 4 (2007).

<sup>355</sup> Interview with Ann-Isabelle von Lingen, Open Society Institute, Brussels, March 25, 2009.



Proven in the past, comprehensive treatment of the sub-challenges, rather in isolation from one another, is what NGOs have come to encourage. Recommendations of practical solutions for Roma inclusion also have their counterpart in the discursive framing of the issue. The NGO community is not oblivious to methods of best-practice sharing – in order for this to work effectively the organizations have to abandon their potentially short-sighted dedication to single issues and ties to narrowly localized context. In some way it entails taking their own advice: focus on the bigger picture while employing the lessons learned at the most grass-roots level and in past minority-majority interactions (positive and negative). This, along with the framing of minority rights as human rights, represents a strategy that can secure NGO success in advancing their mission.

Such targeted handling of norm promotion in the European Union is best illustrated by a contrast between NGOs that embraced it fully and those that continue to be tied to their local context and constrained by the limited openness of national governments to conversation on Roma inclusion. Strategic litigation is an expensive undertaking and a tool best suited for better endowed NGOs. The European Roma Rights Center has been successful in this regard but as their own experience has shown, success depends on effective implementation of judgments at the local level.<sup>356</sup> Thus, involvement of NGOs in the EU-consistent discourse of minority rights that nevertheless highlights the human rights component is not necessarily conditioned by modest resources. Sadly, many Roma rights advocacy groups continue to have trouble getting their message heard and mission accomplished. On a more practical level they are unprepared to

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<sup>356</sup> Robert Kushen, "Implementing Judgments: Making Court Victories Stick," in *Implementation of Judgements* (Budapest: European Roma Rights Center, 2010). For example, without the work of local-level NGO coalition "Together to School" that pressed to apply the ECtHR judgment to avoid future discrimination and segregation in education the court victory would have remained just a piece of paper. Lydia Gall and Robert Kushen, "What Happened to the Promise of D.H.?", in *Implementation of Judgements* (Budapest: European Roma Rights Center, 2010).

receive EU funding and present their work in a way comprehensible to individual-rights focused grant administrators.<sup>357</sup> The human rights framing has been so successful precisely because it corresponds to the EU discourse, while emphasizing the degree of urgency in addressing Roma exclusion, and this is a broader lesson for the future of minority rights advocacy in Europe.

## **Conclusion**

The EU policy has been vaguely formulated and nearly toothless; national governments do the barest minimum, scaling back efforts whenever they get a chance. From the little improvement that there has been, we now know that positive change does not depend on resource availability. Governments with access to EU funds and benefiting from long-established institutional groundwork to combat Roma exclusion (e.g. the Czech Republic, Slovakia, or Hungary) have been outperformed in most issue areas by countries in the Western Balkans.<sup>358</sup> Much of the variation in success of Roma policies is underpinned by the framing of the challenges and whether or not they have been handled in a comprehensive manner. Success will continue to be elusive, if the strategy is merely to put out the hottest fires, rather than a steady effort drawing on well-established principles, such as the human rights frame for minority rights policy.

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<sup>357</sup> Author interview with Ivan Mirga, Regional Office of the Roma Plenipotentiary in Spišská Nová Ves, Slovakia, January 2009; Author interview with Lýdia Gabčová, Open Society Institute – Slovakia, January 2009.

<sup>358</sup> "Decade Watch: Results of the 2009 Survey."

## CHAPTER 6: NUCLEAR SAFETY

The Eastern EU enlargement of 2004-2007 added twenty three new nuclear reactors to the map of the Union's energy landscape.<sup>359</sup> Or rather, twenty three new challenges for advocates of nuclear safety to deal with, as the mostly Soviet-designed nuclear power plants (NPPs) had very little new about them. The four oldest and riskiest from the set have been shut down since, affecting most notably Slovakia and Lithuania.<sup>360</sup> The closure of Slovakia's reactor in Jaslovaské Bohunice, anticipated for years, ended up coinciding with the emergency situation that the gas-supply crisis of early 2009 brought about. In Lithuania, the consequences of pre-agreed reactor closure were more predictable but no less dramatic. The country went from generating over 70% of its electricity at the Ignalina NPP to depending fully on natural gas-based power generation after the second of its two reactors was shut down in December 2009. In addition to these costly closures of an entire generation of nuclear reactors, their slightly younger siblings throughout Eastern Europe were singled out for equally expensive modernization. This, to be sure, did not assuage all fears regarding their safety (most notably in the case of the Czech Republic). Since these measures met international nuclear safety standards, however, the EU enlargement officials deemed them sufficient.

We should not, however, interpret the European Commission's resolute pre-accession stance on decommissioning certain Soviet-made reactors, as signaling the existence of widespread agreement regarding the highly technical, yet sensitive matters of nuclear safety. Throughout the negotiations and onward, the Union could not even present a unified stance on the desirability of nuclear power production in general. Traditional leaders in this field, like

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<sup>359</sup> Bringing the total to about 150. Colin Elman, "Explanatory Typologies in Qualitative Studies of International Politics," *International Organization* 59, no. 02 (2005).

<sup>360</sup> Bulgaria, too, had to close down four of its six reactors – this step, however, took place before its accession to the EU in 2007.

France or Finland remain committed to employing nuclear energy sources as a stable part of their energy mix. Meanwhile, countries like Greece, Ireland and Austria show no inclination to revise their outright rejection of nuclear energy as a viable solution. Complicating matters further, the Netherlands, Sweden, or the United Kingdom have recently revived the debate regarding their nuclear energy policy in light of growing pressures to curb carbon emissions and to reduce dependency on foreign fossil fuels. By contrast, the events at Japanese Fukushima plant returned Germany from the lukewarm camp to its previous position in favor of decommissioning all its nuclear power plants by 2022.<sup>361</sup> The contradiction and uncertainty in member state nuclear energy preferences precluded them from speaking with one voice when vying for competence in the area of nuclear safety with the European Commission. Finally, the European Parliament was also prepared to offer its opinion each step of the way.

Thus, the new members entered a highly complicated and still evolving regulatory environment inside the Union. First, EU's pre-accession demands derived from standards agreed upon at venues that either preceded the enlargement process (such as the conclusions of the 1992 Munich G7 meeting) or that were independent of it entirely (namely the IAEA<sup>362</sup> Convention on Nuclear Safety). Reliance on these external standards followed from the absence of equally well-developed measures within the EU and the poor prospects for reaching speedy agreement on the matter. Second, the closure of dangerous reactors in Eastern Europe was only a temporary solution and the need to address both energy security and nuclear safety in a more comprehensive way remained. Finally, having made considerable concessions prior to joining the EU, the new entrants were prepared to weigh in on safety standard formulation as soon as they had the chance. Their presence at the negotiating table had the potential to sway the balance

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<sup>361</sup> BBC, "Germany: Nuclear Power Plants to Close by 2022," <http://www.bbc.co.uk/news/world-europe-13592208>.

<sup>362</sup> International Atomic Energy Agency.

in favor of the mildly pro-nuclear camp. At the same time, previous failed attempts at regulating nuclear safety at the EU level made the European Commission more conscious of member state demands, regardless of their pre-existing positions. As a result, the lowest common denominator approach that could assure the passing of only the most widely acceptable principles guided subsequent development of nuclear safety standards.

These unique dynamics surrounding the nuclear safety norm in the EU make it a useful case for exploring the framework put forward in this dissertation. A series of case studies examining the reception of the norm in East European candidate countries will test the hypotheses outlined in the classificatory chapter. As the introductory paragraph briefly indicated, there is considerable variation between the challenges that the new EU members had to deal with in the realm of energy policy, and nuclear safety more specifically. The core underlying tension relates to the trade-offs between nuclear safety and energy security, whether in situations of crisis (both emergent and long-term) or with regard to more commonplace balancing of national interest and state identity.

Correspondingly, the case selection for this study aims to map the formulation of nuclear energy policy by former EU candidate countries in response to the demands from Brussels. I leave out Bulgaria and Romania from the analysis because the EU sharpened its negotiating positions in dealing with Slovakia and Lithuania, setting a quasi precedent for the remaining two countries. Moreover, the first group of EU entrants covers the full range of variation that is empirically and theoretically relevant here. At one end of the spectrum we find Lithuania, whose dependence on Russian natural gas following the closure of its only NPP was expected all along, creating a much feared but still unavoidable situation of increased insecurity. The case offers a useful contrast for the study of Slovakia, where the energy crisis that accompanied the reactor

closure was unexpectedly magnified by the consequences of a natural gas trade dispute between Russia and Ukraine. Finally, the Czech Republic's controversial NPP in Temelín was allowed to stay open and even expand. Despite the green light from the G7, the EU and the IAEA, however, the plant faced stalwart opposition from Austria in the form of threats to obstruct Prague's entry into the Union. Each case presents a different mix of external pressures for change, domestic constraints regarding energy production, and official support for the standards stipulated in the accession documents. Collectively, the three countries' respective energy security dilemmas cover the full range of variation and promise to trace the reach of the nuclear safety norm 1./ as it was pre-defined during EU enlargement and 2./ in its changing form once the Eastern European candidates were allowed to join and influence its content.

### **Between Nuclear Safety and Energy Security**

It is unclear how much it cost to build the Ignalina nuclear plant or the other reactors singled out for decommissioning under the EU accession treaty. Centralized economies of the Soviet bloc did not denominate their investments in dollars, if they even monetized such transactions. The plants were built too long ago and nearing their projected life span, the original construction costs were not a large part of calculating the losses that the Lithuanian and Slovak (and Bulgarian) economies would incur upon shutdown. More relevant has been the cost of dismantling these plants, several years earlier than their operating countries would have liked. The figure listed by the European Bank for Reconstruction and Development (EBRD) for Slovakia's Bohunice is 134 million Euros and for Ignalina, which lacked its own decommissioning fund, the number is 334 million. Even more daunting is the projected cost of a new plant, should the countries choose to replace their closed-down reactors with new ones. The

newest generation site under construction in Olkiluoto, Finland, was projected to cost 3 billion euros but is now 50% over budget and overdue.<sup>363</sup> In government accounting books the decision to close down a seemingly functional plant is costly, not just in economic terms. Directly impacting these dilemmas, the G7/EU interpretation of nuclear safety standards represented a very sensitive issue in the small transitioning economies seeking EU membership.

The membership conditionality clause requiring the closure of Ignalina and Bohunice brought into contact two parallel interpretations of the nuclear safety norm. It was clear that the Chernobyl design was fundamentally unsafe and the Lithuanian RBMK reactors – practically identical to the one that exploded disastrously – posed a serious risk. The line became much more blurry after the essential (and costly) safety upgrades were implemented, following pressure and financial assistance from the West. Similarly up for interpretation, the VVER reactors across Eastern Europe fell into two groups, mostly corresponding with their age. Some made the cut for continued operation, while others did not. All along, the affected governments denied accusations of risking the safety of people and the environment in demanding the reactors' continued operation. We now know that this undisputed commitment to radiation protection was related to the universal quality of the nuclear safety norm. Despite this agreement on the paramount importance of accident prevention, however, the numerous stakeholders viewed the same technical data with varying degrees of optimism.

Recent events in Japan further highlight the fluidity of the nuclear safety norm. The nuclear sector claims to be fully determined to keep all nuclear sites incident free – if asked prior to the Fukushima disaster, operators worldwide, including those in Japan, would have said that their plants are as safe as can be. There was no room for improvement. It was only *after* the devastating tsunami flooding that we found out the same standards were no longer strict enough

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<sup>363</sup> James Kanter, "In Finland, Nuclear Renaissance Runs into Trouble," *The New York Times*, May 28 2009.

for some countries, irrespective of their distance from the ocean and tsunami probabilities, most prominently Germany. Yet others, Eastern Europeans and Japan among them, were not dissuaded from judging favorably their ability to prevent future incidents. In practical terms, nuclear installations are safe until the day they are not. The tolerable risk is expressed in decimal numbers so small that power notation is used to cut down on the zeroes needed. Yet, the risk exists. The disputability of measures considered reasonable in preventing accidents offers interesting opportunities to study the political balancing in the normative realm. The nuclear safety norm, classified as regulative / universal, led to a shallow consensus dictated by Eastern European desire to join the EU and the need for a politically viable approach on the part of the old member states. This may have given the false illusion of homogeneity, which the empirical work in this chapter sets out to evaluate.

The competing agendas of the European Commission and the pro- and non-nuclear member states carried over into early post-enlargement years, when a basic piece of legislation, the Nuclear Safety Directive was still under discussion. The desire to keep Europe safe from nuclear accidents seemed universal – the preferred means of achieving this end were not. An important player in this game has been the European public i.e. voters, exposed to forceful argumentation from all sides. Where the environmental interest groups highlighted the risks of nuclear plant operation and waste storage, advocates of nuclear power responded with arguments about energy costs and, more recently, greenhouse emissions. When the European Commission advocated an EU-wide regulatory body that would guarantee greater independence and stronger oversight, governments charged back with concerns about state sovereignty, energy security, economic growth and the level of expertise in monolithic supervisory authorities. The opinion surveys show that Europeans are susceptible to all these arguments but so far the public has



served as an anchor against reckless approaches to nuclear energy.<sup>364</sup> The classification of the nuclear safety norm as universal based on past developments might be reassuring in this regard. Nevertheless, chapter 7 will ask the question of whether it is conceivable that the case for a “particularization” of nuclear safety could be made and what it would take to “spoil” the societies.

Prior to discussing potential shifts within the typology, however, we need to carefully examine the hypotheses relating to the cell occupied by nuclear safety. The regulative properties of the norm, affecting states more directly than societies, generate compelling questions with regard to the norm’s proliferation. If the nuclear safety norm meets with resistance, this should happen at the level of governments, whose officials find themselves balancing the imperatives of safe NPP operation against the stability of energy supply and the costs associated with both. Along these lines, the core hypothesis guiding this chapter stipulates that as long as they are subject to pressures outside the realm on nuclear safety, governments will be reluctant to give in to the EU-advocated norm without reservations. I will examine official documents, as well as speeches by the Czech, Slovak, and Lithuanian government representatives to uncover the underlying motivations for their behavior, as related to nuclear safety requirements in the course of EU accession. I will pay attention to the incentives the three countries received from their Western European partners and primarily the ways in which such nudging may have masked the real dilemmas faced by candidate country governments.

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<sup>364</sup> "Attitudes on Issues Related to EU Energy Policy," in *Flash Eurobarometer Series* (European Commission, 2007); "Eurobarometer: Europeans and Nuclear Safety," (Brussels: European Commission, 2007); "Eurobarometer: Attitudes Towards Radioactive Waste."; Eurobarometer, "Eurobarometer: Europeans and Nuclear Safety."

## *Methodology and Data*

Whereas in the case of societal resistance the data needs to be collected at that level, as the minority rights chapter has done, in the case of competing policy approaches which tend to be government dominated, it is most productive to focus on official documents illustrating both the initial tensions and subsequent adjustment, if any.<sup>365</sup> Following this structure of empirical analysis, the current chapter will be devoted to a comparison of EU formulations of the nuclear safety norm with government documents from the Czech Republic, Slovakia and Lithuania. The approach promises to uncover the degree to which the candidate positions overlapped with those of EU institutions or, conversely, where they disagreed the most. At the same time, we should not lose sight of the fact that governments are not insulated from their respective societies and that domestic dynamics often influence international commitments. Given the regulative / universal quality of the nuclear safety norm, we can expect societal pressures to moderate government enthusiasm about nuclear power as a simple solution to energy security challenges.

The empirical analysis begins by examining EU documents that shaped the understanding of nuclear safety since the Chernobyl accident. These documents fall into several main categories with respect to origin and intended audience. Together, they cover the full range of official formulations and so provide a sound basis for this study. First, I will consider the periodic communications from the European Commission to the Council and the European Parliament regarding the state of nuclear safety in the EU, as well as Eastern Europe and the Newly Independent States (NIS). Equally important are the regular reports submitted by the European Commission to the IAEA directorate concerning the compliance by EU member states with the

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<sup>365</sup> For a summary of challenges with regard to change and timeframe analysis see Yoshiko M. Herrera and Bear F. Braumoeller, "Symposium: Discourse and Content Analysis," *Qualitative Methods* Spring(2004): 18.

provisions of the Nuclear Safety Convention. Third, it is important to trace the attempts at developing an EU-specific Directive on Nuclear Safety, which began in 2003. The effort encountered serious setbacks but was revisited in 2008 and the new Directive was approved in 2009, providing crucial evidence about the norm's development. Finally, it is also relevant to include the Accession Treaty Protocols stipulating the conditions for the mandatory reactor closure in Lithuania, Slovakia, and Bulgaria. This set of documents (twenty in total) is well defined but nevertheless constitutes a considerable volume of written text.<sup>366</sup> As a result, the task of analyzing the data has been accomplished with the help of qualitative text analysis software (Atlas.ti) that permits a combination of semi-automated and human coding of the content in EU-issued documents, representing the first stage of the present study.

My approach to content analysis combines computer-aided and human coding seeking to strike a balance between purely qualitative and strictly quantitative measures. The former are subject to researcher biases and idiosyncrasies, while the latter risk omitting important concepts detectable only through a close reading of documents.<sup>367</sup> The purpose of the combined approach is to avoid either of the two weaknesses affecting the findings. A degree of code standardization and reproducibility is desirable given the subsequent application of these codes in the analysis of government documents collected for the three countries under examination here. Defining a coding scheme that is easily comprehensible to the text analysis software sets the stage for a fruitful comparison of the results obtained by examining three diverse sets of country-specific documents at a later stage, using that same software. In addition, this project will use codes deductively derived from the underlying theoretical framework alongside those uncovered inductively from the relevant EU documents. Mere "word crunching," which the strictly

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<sup>366</sup> Nearly 500 pages.

<sup>367</sup> Kimberly A. Neuendorf, "Content Analysis - a Contrast and Complement to Discourse Analysis," *Qualitative Methods* Spring(2004).

quantitative approaches require, does not lend itself well for combining these two strategies of code generation.

Effectively, the initial exploration of EU documents in isolation from the country-level data satisfies the requirement of a priori design in generating coding schemes.<sup>368</sup> Once the coding scheme capturing in detail the content of the European nuclear safety norm has been established, it will be applied to official documents from Lithuania, Slovakia, and the Czech Republic. The goal is to assess their respective adherence to the EU norm, as defined by the documents analyzed in the first stage of the study. In this second stage, rather than taking advantage of the hybrid content analysis approach justified previously, it will be possible to apply the two approaches to content analysis sequentially. First, a relatively straightforward tally of code occurrence in country-level documents promises more generalizable conclusions from the three-way comparison. Next, a more nuanced analysis will help uncover the underlying dynamics and possibly generate further hypotheses regarding the evolution of the nuclear safety norm in an enlarged EU.

The issue of comparability naturally arises with this research design – each country case is built around a different set of documents. This is particularly problematic for text analysis because counting the occurrence of individual codes tells us little without a shared base that could “standardize” the results. I get around this problem in two ways. First, akin to the solution used in the minority rights chapter, I use the EU documents and the codes derived from these as the shared reference point for all three country cases. Second, unwilling to give up the advantages of quantitative text analysis entirely, I employ paired coding that mirrors the two-pronged indicators of norm types developed in the theoretical chapter (table 2.1). What this means is that following a detailed analysis of EU documents, I was able to uncover an either/or

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<sup>368</sup> Kimberly A. Neuendorf, *The Content Analysis Guidebook*. (Thousand Oaks, CA: Sage Publications, 2002).

metric for each criterion classifying a norm as particular vs. universal or regulative vs. constitutive (see table 6.1 below).

**Table 6.1: Norm-type derived content analysis codes.**

	<i>Content Analysis Codes</i>	<i>Indicator level</i>	<i>Shared empirical questions</i>	<i>Indicator level</i>	<i>Content Analysis Codes</i>	
Particular norms	- <b>Exceptional circumstances</b> determine nuclear policy priorities	Society/community-specific norm origin	Is the origin of the norm identifiable?	Shared experiences facilitated widespread comprehension and appeal of the norm	- <b>Interdependence</b> - <b>Environmental degradation prevention*</b> - <b>Vulnerability</b> to radiation	Universal norms
	- <b>Country-specific framing</b> of challenges and solutions (non-nuclear consequences of NPP closures) - <b>Country level</b> economic / strategic imperatives	Collectivities concerned and victims of violation defined by the norm	Does the norm alter the patterns of interaction between individuals and re-designate the groups they belong to?	Scope of the norm's effectiveness, also determines norm content	- <b>EU-wide</b> challenges and solutions - <b>Nuclear risks</b> affecting nuclear and non-nuclear states alike	
	- <b>National interests first</b> - Self-sufficiency/competitiveness <b>trumps climate change</b>	Legitimation <i>follows</i> norm adoption	Do the justifications for following the norm aim to draw a line behind the pre-adoption past?	Legitimation <i>precedes</i> norm adoption	- Inherent <b>risks and uncertainties</b> of nuclear safety: prevention, assessment - Climate change / <b>integrated environmental and energy policy*</b>	
	- <b>Opposition to harmonization</b> - <b>Local</b> (financial) <b>constraint</b> salience	Local material realities matter for the processing of the norm	Is there high variation between the local approaches to the norm's implementation?	Pressure concentrating on centralized norm guarantors (e.g. governments) to enact change	- EC as nuclear policy <b>coordinator</b> (EURATOM vs. member states) - <b>Regulator independence</b> - Regulation <b>harmonization</b> at EU level	
* Framed as policy goals, rather than description of reality or the current state of nuclear safety in the EU						
Regulative norms	- EU financial support as <b>necessity</b> - <b>National Strategic imperatives</b> – nuclear power is too special - <b>Optimism</b> on reactor life	Mutually agreed-upon rules of behavior underpinned by instrumental reasoning	Does the norm define a certain identity, discernible by its bearers and by others?	Compliance with the norm delineates the difference between members and non-members	- Financial support as <b>solidarity</b> - <b>Int'l obligations</b> as justifications for action; Accession documents key - <b>Chernobyl</b> /past lessons	Constitutive norms

For instance, the financial assistance provided for the decommissioning of risky nuclear reactors in Eastern Europe was presented (and received) as *either* an act of solidarity *or* one of necessity. The former indicates a constitutive quality of the approach to nuclear safety, the latter results in labeling it as regulative instead. The code pair, along with several more, was applied to the country cases, making it possible for us to gauge the overall balance between solidarity and necessity (and so the constitutive or regulative effect of norms on governments). The resulting comparison between EU and member-state documents, as well as that among the three countries studied here is rigorous and immune to bias from document length, audience, or method of delivery.

### *The EU and Nuclear Safety*

In 2004, Lithuania and Slovakia joined the EU under the condition that they will shut down their most risky nuclear plants. The uncompromising position that the enlargement officials took on this issue, however, is not necessarily reflective of a broad consensus on minimum nuclear safety measures in the Union. On the contrary, considerable discord stems from the combination of reliance on IAEA standards, the built-in flexibility in following them, and still-evolving nuclear safety regulations at the EU level. Despite efforts to expand the community legislation on the subject, the road has been rather bumpy, with limited agreement attainable among member states, as well as between them and the Commission. As a result, the norm stipulating the closure of the reactors in Ignalina (Lithuania) and Jaslovské Bohunice

(Slovakia) was consistent with the Commission's preferences but perhaps did not fully exhaust them.

The analysis of key EU documents in this section will lay the groundwork for comparing these documents with the perspectives presented by Lithuania, Slovakia, and the Czech Republic. The most telling story unfolded as the proposal for a nuclear safety directive went through its various iterations between 2003 and 2009. The process effectively transformed the discussion of nuclear safety into a negotiation, if not battle, over competence between the Commission and member states. As a result, the stakes were high and the trail of documents leading to the final directive contains evidence about the Commission's highest priorities, as well as areas where it was forced to compromise. The EC desire to develop a framework directive on this issue provides the counterpoint to the hypothesis-expected resistance from governments and though it does not warrant reclassifying the norm as constitutive, rather than regulative, this is the area where we should look for most disagreement.

When Eastern European states first expressed their desire to join the European Union, the safety culture in their nuclear power plants lagged behind that of Western Europe. Nicely put, the post-Soviet approach to nuclear safety was more "laid back."<sup>369</sup> As early as 1993, a Communication from the EC to the Council and the Parliament on the state of nuclear safety in Eastern Europe concentrated on introducing changes to the safety culture and emphasized the transfer of Western know-how in staff training and twinning projects.<sup>370</sup> The document characterized the general management of nuclear power plants as suboptimal and failing to properly ensure a smooth flow of information. In a way typical of post-communist organizations

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<sup>369</sup> Interview with Derek Taylor, Directorate General for Energy, European Commission, Brussels, April 22, 2009. Mr. Taylor headed the nuclear unit between 1995 and 2004.

<sup>370</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," 8, 28.



at the time, “the NPPs [were] over-staffed and there [was] no clear identification of responsibilities.”<sup>371</sup> The European Commission deemed this lack of communication and transparency particularly problematic – a smaller scale incident similar to the one in Chernobyl had occurred earlier at the Ignalina plant but was never communicated to the Ukrainian authorities, which likely contributed to the disaster.<sup>372</sup> Information sharing with the public also lagged behind practices common in the West and regulatory authorities were not readily open to external review of their procedures.<sup>373</sup> While the deficiencies in approaches to nuclear safety in the East seemed clear, the alternative and presumably superior measures in the West did not.

The inability to agree on uniform standards within the EU was compensated by feigned resoluteness on the reactor decommissioning issue in the course of accession. The decision making on closure dates was telling. If the reactors were not safe, the experts charged, they should have been closed right away; the IAEA standards already regulate such pressing situations. In an overt example of politically driven decisions dominating safety imperatives, the shutdown of the controversial reactors was in all cases scheduled for winter time (end of the calendar year), when additional measures had to be taken to provide heating of sensitive equipment that was no longer generating its own energy. In Lithuania this necessitated the construction of a whole new heating unit and left nuclear safety experts shaking their heads.<sup>374</sup> Itself dissatisfied with this ad hoc approach to decommissioning, the Commission set out to develop new standards that would set the tone for future development of the nuclear sector in

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<sup>371</sup> Ibid., 10.

<sup>372</sup> Interview with Derek Taylor, Directorate General for Energy, European Commission, Brussels, April 22, 2009.

<sup>373</sup> Interview with Agnija Rasa, Member of Cabinet of Commissioner Piebalgs (Energy), Brussels, April 14, 2009.

<sup>374</sup> Interview with Egidijus Urbonavicius and Rolandas Urbonas, Lithuanian Energy Institute, Kaunas, November 11, 2008.

Europe. The reasoning was simple: if certain standards were applied during the accession, they should apply across the Union.<sup>375</sup>

The work carried out in the Community framework in order to bring nuclear installations in the candidate countries up to a high level of safety allowed a European perspective to emerge in this context. This perspective, developed for the candidate countries, is *universal*.<sup>376</sup>

There was a long way, however, from highlighting the universal quality of the desire to keep Europeans and the environment safe from radiation to asserting a link to a European identity, or “perspective,” suggestive of a constitutive nature of the norm. The European Commission tried its best but these efforts were curtailed by the defensiveness of national-level authorities.

In practical terms, the greatest challenge lay in navigating the political landscape marked by the sensitivity of energy security and nuclear safety questions, in addition to turf wars between the Commission and the Council. The EC made the initial step in suggesting that the EU *as a community* accede to the IAEA Convention on Nuclear Safety, to which individual states were parties already. This was rejected by member states on the grounds that the Commission did not possess the competence to regulate this issue area. In 2002, however, the European Court of Justice (ECJ) ruled that nuclear safety did, in fact, fall within the scope of the Euratom treaty, which already governed radiation protection. Simply put, although the use of nuclear energy remained a member state issue, the question of nuclear safety was now an EU-level responsibility.<sup>377</sup> Encouraged by this ECJ decision and pressured to address the normative

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<sup>375</sup> Interview with Pekka Jarvilehto, Directorate General for Environment, Brussels, March 23, 2009.

<sup>376</sup> Emphasis added. Explanatory memorandum. "Proposal for a Council (Euratom) Directive: Setting out Basic Obligations and General Principles on the Safety of Nuclear Installations."

<sup>377</sup> Interview with Agnija Rasa, Member of Cabinet of Commissioner Piebalgs (Energy), Brussels, April 14, 2009.

vacuum vis-à-vis candidate countries, the Commission proposed two parallel directives to regulate nuclear safety and the disposal of radioactive waste. The events that followed suggest that despite being the designated target of this legislative initiative, nuclear safety took the second seat to political battles within the EU.

The proposed directive package enjoyed support only from France and Spain. Other member states had various reasons for rejecting the 2003 nuclear safety / waste directive draft. Besides the traditionally non-nuclear states like Austria, Ireland, or Greece, The United Kingdom worried about the impact of the vaguely formulated directive on its unique reactor types and received backing from Finland and Sweden in this regard. Germany was mired in domestic disputes, when the Ministry of the Environment supported the waste directive but had difficulty with the nuclear safety measures, deemed insufficient, while the Ministry of Industry had precisely the opposite preferences.<sup>378</sup> A comparison of the original nuclear safety directive with its iteration from 2009 and a look the “corrections” that the latter version included reveals three main reasons why the 2003 package did not go through.<sup>379</sup> First, the request to keep decommissioning funds completely separate from other commercial activity was unacceptable to plant operators. Second, the safety standards were not properly defined in the text, which left member states unsure about what steps they would have to take and, more importantly, what the longer term repercussions of the directive would be. Third, attempts to centralize inspection competences were deemed problematic: they challenged the tradition of national regulatory independence, yet had not addressed the question of qualified staffing for the proposed EU core of inspectors. The failed legislative attempt led to a political silence on the issue until 2005 when

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<sup>378</sup> Interview with Derek Taylor, Directorate General for Energy, European Commission, Brussels, April 22, 2009.

<sup>379</sup> Interview with Massimo Garribba, Directorate General for Energy, Luxembourg, March 23, 2009.

the efforts to develop a common energy policy necessitated a more comprehensive approach that covered also coordination on environmental commitments and energy mix.

Member states, now including former candidates, began making plans for new nuclear reactors and those that were not, struggled with the question of energy supply upon their existing plants' closure. The Commission was aware of the looming decisions to extend the lifetime of older reactors along with the security risks associated with their higher average age, seeing room for EU-level cooperation.<sup>380</sup> In particular, the EC sought to develop reference points to guide future safety evaluations and introduced a substantially revised proposal of the nuclear safety directive, this time without the waste management add-on. The new text was more sensitive to the principle of subsidiarity and presented as its main objective strengthening the role of national regulators. It acknowledged their authority and at the same time provided EU-level enforcement of prior obligations under the IAEA Convention on Nuclear Safety. This time, the Commission reassured the member states that it does not want to look over regulators' shoulder but instead give the relatively weaker IAEA commitments legal certainty within the Union.<sup>381</sup>

It is useful to build on the process where the national safety authorities of the Member States having nuclear power plants on their territory have been working together in the context of Western European Nuclear Regulator's Association (WENRA) and have defined many safety reference levels for power reactors.<sup>382</sup>

The Commission retained the right to propose new measures, solidifying its ECJ victory on nuclear safety competence, but expected reporting from member states on the specific conditions

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<sup>380</sup> Interview with Agnija Rasa, Member of Cabinet of Commissioner Piebalgs (Energy), Brussels, April 14, 2009.

<sup>381</sup> Interview with Agnija Rasa, Member of Cabinet of Commissioner Piebalgs (Energy), Brussels, April 14, 2009.

<sup>382</sup> "Council Directive 2009/71/Euratom Establishing a Community Framework for the Nuclear Safety of Nuclear Installations,." (Brussels: Official Journal of the European Union, 2009).

of both their reactors and those of their peers. The new directive filled a void caused by WENRA's lack of a legal personality, despite its high profile in the nuclear safety policy area. The main complaint about the content of the revised directive was that it did not result in substantive change as it still relied heavily on the existing IAEA standards. The Commission, however, viewed this as an important contribution to the legal enforceability of nuclear safety within the Union and better control over future developments in this field.<sup>383</sup> Though no one dared use the language of identity, it is apparent from the Commission's ambitious move at the outset and its willingness to bide its time in the end that the EU battle for control over nuclear safety, as well as its nature as a norm, is not over yet.

#### *Technicalities and Identities: Government Positions on Nuclear Safety in Europe*

The classification of the nuclear safety as universal and regulative led us to expect *government* resistance to the technical details of the norm. The wiggle room that governments enjoy in connection to regulative norms is much greater than with norms described as constitutive. The latter norms are by definition tied to a unique identity and the membership in a normative community that they designate makes their violation unthinkable or, at best, highly costly. Regulative norms, by contrast, are put in place for instrumental reasons that lend themselves well to calculations by rational actors like governments, especially if they face other more compelling constraints. In the case of nuclear safety, the interference may come in the form of worries about energy security, the economic cost of scarce or expensively produced electricity, or a premium placed on policy independence and state sovereignty. On the flip side, and contributing to its designation as universal, the norm is aided by public concerns about the

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<sup>383</sup> Interview with Massimo Garribba, Directorate General for Energy, Luxembourg, March 23, 2009.

risks associated with nuclear energy. Governments need to address these trade-offs if they wish to construct and operate nuclear power plants.

As the preceding section about the state of nuclear safety at the EU level made clear, the Commission-formulated version of the norm competes for policy space with conceptions of nuclear safety put forward by individual member states. We now know that from the perspective of the European Commission there is the “preferred” version of the norm and the one that was politically feasible in the midst of continued disagreement on the subject among member states. Those wishing to pursue peaceful use of nuclear energy have been confronted with both versions – the former as a policy statement by the Commission, the latter as a newly legal norm with consequences for nuclear sector regulation. The distinction may be more analytical, than practical, but it nevertheless provides a solid basis for tracing the member state responses to the evolving formulations of nuclear safety in Europe. A parallel examination of official EU documents and those issued by the Czech, Lithuanian and Slovak governments<sup>384</sup> will help us evaluate the degree of government resistance, reasons behind it and implications for the future of nuclear safety as a Europe-wide / international norm.

Table 6.2 below summarizes the coding results for the regulative/constitutive dimension in the typology proposed here. Each indicator of the norm’s attributes has been associated with a pair of codes to indicate the relative weight attributed to one or the other in the official texts. Obviously, the assembly of documents I examined is different for each country case and the results are organized accordingly. For greater legibility, the higher figures in each paired comparison have been highlighted in bold.

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<sup>384</sup> See Appendix I for complete list of EU and government documents included in this analysis.

**Table 6.2: Coding of the regulative/constitutive dimension**

		<i>REGULATIVE NORM CODES</i>		<i>CONSTITUTIVE NORM CODES</i>
		Financial support as necessity	LINK BETWEEN THE NORM AND AN (EU) IDENTITY	Financial support as solidarity
EU		25		<b>57</b>
Czech		<b>0</b>		<b>0</b>
Lithuania		<b>17</b>		5
Slovakia		<b>2</b>		0
		National strategic imperatives		International/EU obligations justify action
EU		8		<b>97</b>
Czech		<b>12</b>		4
Lithuania		<b>16</b>		7
Slovakia		<b>19</b>		6
		Optimism on reactor life		Lessons from the Past
EU		0		<b>34</b>
Czech		<b>7</b>		<b>7</b>
Lithuania		<b>8</b>		1
Slovakia		<b>18</b>		1

The first category juxtaposes an instrumental approach to financial assistance, which takes into account safety and security threats to Europe's people and economies, against the view of funding as solidarity. As the label suggests, if the aid was offered (or received) as an act of solidarity, it was likely voluntary and underpinned by membership in a community of states. A shared identity as safety-conscious European states that reach beyond the minimum measures required by the IAEA has the potential to generate much greater pressure on candidates aspiring for membership in this club. The European Commission's steps to lay the necessary legislative groundwork on nuclear safety prior to the Eastern enlargement coincided with an attempt at such principled defense of the norm. The member states, as well as EU candidates, however, were quick to pick up on this intention and made their own preferences clear. The comparison of the

relative weighting of solidarity versus necessity in connection to the funding provided for safety upgrades and decommissioning makes the dividing line quite clear.

To be sure, the Commission acknowledged the urgency in addressing pressing deficiencies of Soviet-built reactors,<sup>385</sup> and recognized the low safety levels in NIS countries as particularly problematic.<sup>386</sup> Arguments about the necessity of supporting states in their decommissioning efforts, which the Commission was not blind to, derived from the fact that the expensive upgrades were externally mandated at a G7 meeting,<sup>387</sup> the economic realities of post-communist transition threatening risky cost-based trade-offs involving safety,<sup>388</sup> and security implications more generally.<sup>389</sup> These reasons for funding, however, were far outweighed by the Commission's references to solidarity in financing the costly upgrades that the East European governments suddenly faced. Such justifications focused on promoting regional cooperation and dissemination of know-how that nuclear regulators in both the East and the West could benefit from.<sup>390</sup> The main principle guiding aid to countries in the EU candidate pool and beyond advocated "help for self-help"<sup>391</sup> and attracted funding also from institutions not commonly engaged in this issue area (e.g. European Parliament).<sup>392</sup> The Commission was not indifferent to the inherited liabilities that Lithuania, Slovakia, and also Bulgaria faced as they closed down

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<sup>385</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," 5.

<sup>386</sup> "Communication from the Commission to the Council and the European Parliament: Commission Support to Nuclear Safety in the Newly Independent States and Central and Eastern Europe," (Commission of the European Communities, 2000), 9.

<sup>387</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS," 15.

<sup>388</sup> Ibid., 24.

<sup>389</sup> Among these, employment for nuclear scientists and safe treatment of nuclear materials loomed the largest. Tarrow, *Power in Movement: Social Movements and Contentious Politics*

<sup>390</sup> commission, "Communication from the Commission to the Council and the European Parliament: Nuclear Safety in the Context of the Electricity Sector in Central and Eastern Europe and in the CIS."

<sup>391</sup> Ibid., 28; "Communication from the Commission to the Council and the European Parliament: Commission Support to Nuclear Safety in the Newly Independent States and Central and Eastern Europe," 17.

<sup>392</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics* 21.



their reactors.<sup>393</sup> Unlike the grant recipients, however, it expressed solidarity with the closure commitments and expected this approach to generate a desire for acquiring an EU-member identity.<sup>394</sup>

In selected contexts, the Lithuanian government made appeals for increased funding amounts on solidarity grounds as well. As Prime Minister Kirkilas put it prior to the closure of Ignalina's second reactor, "I am confident that we will be able to find a mutually acceptable solution based on the principle of solidarity and good will."<sup>395</sup> Same reasoning was also an important element during the Ignalina decommissioning negotiations:

Acknowledging the readiness of the Union to provide adequate additional Community assistance to the efforts by Lithuania to decommission the Ignalina Nuclear Power Plant and highlighting this expression of solidarity, Lithuania commits to the closure of Unit 1 of the Ignalina Nuclear Power Plant before 2005 and of Unit 2 of this plant by 31 December 2009 at the latest and to the subsequent decommissioning of these units.<sup>396</sup>

Yet, whereas the language of solidarity was convenient in direct communications with the Commission, especially when it promised additional assistance, it was quickly abandoned when

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<sup>393</sup> Commission, "Proposal for a Council Regulation on the Implementation of Protocol No 9 on the Bohunice V1 Nuclear Power Plant in Slovakia, as Annexed to the Act Concerning the Conditions of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia."; Commission, "Proposal for a Council Regulation on the Implementation of Protocol No 4 on the Ignalina Nuclear Power Plant in Lithuania, as Annexed to the Act Concerning the Conditions of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia; 'Ignalina Programme' ".

<sup>394</sup> "Nuclear Illustrative Programme: Presented under Article 40 of the Eurotam Treaty for the Opinion of the European Economic and Social Committee," 17.

<sup>395</sup> Kirkilas, "Speech by the Prime Minister of the Republic of Lithuania H. E. Mr. Gediminas Kirkilas, European Nuclear Energy Forum."

<sup>396</sup> "Protocol No. 4 in the Ignalina Nuclear Power Plant in Lithuania ", (2002).

discussing the pressing nature of the challenges the country would face upon giving up its NPP.<sup>397</sup>

Closure of the Ignalina NPP will cause a number of problems that will call for immediate action with the view to ensuring nuclear safety, security of electricity supply, quality of the atmosphere, and adequate standard of living in the Ignalina NPP region.<sup>398</sup>

The priority for Vilnius was the acquisition of sufficient funding to pay for decommissioning, construction of capacities to compensate for the outage through gas-based electricity generation, as well as interconnections with power grids in Poland and Scandinavia. The Lithuanian position agreed with EU's emphasis on safety but also included a declaration of an inability to carry the burden alone. If safety was not to be compromised, Lithuania would require considerable external help. From their perspective, this was a matter of necessity. The same approach was mirrored in the Slovak case but the discussion of funding the country had received for decommissioning of Bohunice generally took the back seat in the documents examined here. The priority was the completion of half-built reactor blocks at another NPP in Mochovce. In the case of the Czech Republic discussion of financial assistance is entirely absent, which is not surprising given the continued operation of all its reactors. On this first measure, therefore, Lithuania represents the best example of the instrumental reasoning used by candidate countries, in contrast to the EU discourse of nuclear safety funding as bearing a constitutive quality.

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<sup>397</sup> "Press Conference after Talks of the PM Mirek Topolánek with the PM of the Lithuanian Republic, Gediminas Kirkilas.," (Prague2008).

<sup>398</sup> "Directions for Mitigating the Consequences of the Closure of Unit 1 and 2 of the State Enterprise Ignalina Nuclear Power Plant," (Vilnius2003).

The second measure of norm effect on governments considers the attention to national strategic imperatives on the one hand and nuclear safety in the context of international or, more narrowly, EU obligations on the other hand. This coding scheme references theories about the role of identity in international relations that object to arguments about states always pursuing their narrow strategic interests. As is often the case, states sometimes forego immediate interests for those defined by membership (desired or actual) in a community of states. The national strategic imperatives therefore summarize the traditional conception of state interest, whereas the international obligations justifications draw on an international identity for legitimacy.

An overwhelming majority of coded quotations in EU-issued documents incorporates the need for a community-conscious approach to nuclear safety. This most frequent overall code refers to nuclear safety as an imperative of membership in an international community. Such socializing relations range from loose statements of obligation under the IAEA or G-7 standards to the dense interactions within the European Union. The latter have been particularly ambitious. According to the Commission President Barroso

we need to develop further in Europe the most advanced framework for nuclear energy, meeting the highest standards of safety, security and non-proliferation. The EU should also continue their efforts to ensure that such high standards are observed internationally, in the context of increased cooperation with the IAEA.<sup>399</sup>

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<sup>399</sup> Jose-Manuel Barroso, "Welcome Address by European Commission President Jose-Manuel Barroso, European Nuclear Energy Forum," (Bratislava2007).

Although this desired reach of the community-wide approach has been curtailed by member states as the nuclear safety legislation took shape, the frame has dominated in EU documents on the subject.

The Czech, Lithuanian, and Slovak texts, by contrast, pay marginal attention to the European face of nuclear safety and instead focus on the impact of any prospective safety standard revisions on their unique energy security situations. The rhetoric by Slovakia's Prime Minister is particularly interesting in this regard. At all occasions marking the EU-mandated shut-down of old reactors in Bohunice, as well as in pronouncements responding to the gas crisis of early 2009 Robert Fico took the opportunity to give a nod to international obligations and challenge them at the same time. His use of the phrase "*pacta sunt servanda*," or treaties are to be fulfilled, often occurs simultaneously with calls to revise said treaties:

The Government of the Slovak Republic wishes to be a trustworthy partner and we respect the international law principle of *pacta sunt servanda*. If, however, an extraordinary situation in the supply of electricity should come about, although there is no reason to fear this likely, we would view these commitments [to close down reactors in Bohunice] differently than we do at the present time.<sup>400</sup>

...what can we do now? The principle *pacta sunt servanda* holds – we have to fulfill our obligations [and shut down Bohunice]. This principle can be broken only through agreement. As a result, I would equate solidarity with interest by European institutions to discuss this serious topic with us. We reject the position of "leave this matter alone, *pacta sunt servanda*."<sup>401</sup>

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<sup>400</sup> Robert Fico, "Press Conference on the EC Opinion Regarding Construction Completion at the Mochovce Nuclear Power Plant," (Bratislava2008).

<sup>401</sup> "Press Conference by Mirek Topolánek, Robert Fico, Gediminas Kirkilas and Andris Piebalgs, European Nuclear Energy Forum," (Prague2008).

In fact, the Slovak prime minister questioned the underlying commitments more often than he affirmed them. This position is closely related to the dominance of the national strategic imperatives frame that rejects attempts at drawing links between nuclear safety and a narrower (European) identity.

All three governments emphasize the role of nuclear power in remedying the pressures resulting from dependence on Russian-supplied fossil fuels.<sup>402</sup> Nuclear safety standards that streamed from the West and led to the closure of reactors in Ignalina and Bohunice came to be associated with the precarious energy security situation that resulted.<sup>403</sup> In this context, the protection of national interests has taken precedent over any desire to reformulate these preferences in favor of an identity shift towards a broader European perspective. On the contrary, the lagging efforts to develop a common EU energy policy have exaggerated the insecurities experienced by Lithuania, Slovakia and even the Czech Republic and resulted in these governments' resistance to certain aspects of the nuclear safety norm.

The final measure of opposition to the norm in the three countries examines the extent to which the governments relied on optimism about reactor life to counter-balance the need for attention to risks and lessons born by past nuclear accidents (Three Mile Island, Chernobyl, and most recently also Fukushima). The misalignment between the EU language on the issue and that used in the Czech Republic, Lithuania and Slovakia, is again notable. The EU documents frequently point out that the current safety standards have their roots in responses (and non-

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<sup>402</sup> Ibid. Mirek Topolánek, "Speech by Prime Minister of the Czech Republic Mirek Topolánek, European Nuclear Energy Forum," (Bratislava 2008).

<sup>403</sup> Fico, "Press Conference on the EC Opinion Regarding Construction Completion at the Mochovce Nuclear Power Plant."; Kirkilas, "Speech by the Prime Minister of the Republic of Lithuania H. E. Mr. Gediminas Kirkilas, European Nuclear Energy Forum."; "Proposal for an Energy Security Strategy of the Slovak Republic," (Bratislava: Ministry of Economy, 2008).

responses) to past accidents.<sup>404</sup> Even more explicitly, the texts highlight the need to remain cautious and continue measures that can help reduce the risk of nuclear disasters occurring in the future.<sup>405</sup> The EU documents also refer to past incidents as the main reason for viewing the safety of reactors in former Soviet bloc countries with skepticism.<sup>406</sup> Especially the Chernobyl blast has had a strong impact on the formulation of nuclear safety in Western Europe, traumatized by the intransparency that left them helpless prior to, as well as following the incident. The verdict on operation of reactors scheduled for a shut-down was clear:

No Community assistance will be considered for projects which could contribute to prolonging the operation of these reactors beyond the provisions of the agreed closure commitments.<sup>407</sup>

For EU officials, lessons drawn from past events *are* the new safety norm. As a result, it is possible to treat attitudes to past accidents as a litmus test for government openness to the norm's principles.

On this count, the approach to safety has been relatively balanced in the Czech Republic. The coding of government documents reveals roughly equal emphasis on lessons from the past and hopes for the future, including an optimistic assessment of reactor safety features. This is in part a result of uninterrupted operation at all Czech nuclear power plants, despite some essential safety upgrades. The discourse in Prague, however, does not overlap with the EU focus entirely. The concern with past accidents in speeches by Czech officials seems to be mostly related to

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<sup>404</sup> Commission, "Communication of the Commission: Assurance of Safety of Nuclear Power Plants - Objectives and Methods."; "Communication from the Commission on the Nuclear Industries in the European Union."

<sup>405</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics*

<sup>406</sup> "Proposal for a Council (Euratom) Directive: Setting out Basic Obligations and General Principles on the Safety of Nuclear Installations."

<sup>407</sup> "Communication from the Commission to the Council and the European Parliament: Commission Support to Nuclear Safety in the Newly Independent States and Central and Eastern Europe," 7.

worries about the lasting impact that Chernobyl (and now Fukushima), may have had on general disposition of the public towards nuclear power.<sup>408</sup> As the Czech government has been actively involved in further expansion of nuclear power capacities, its take on past accidents diverged from that uncovered in documents published by the European Commission. Most notably, where the EC has highlighted the seriousness of past accidents (conscious of the diverse voices from within the Union, including those openly opposed to nuclear energy), the Czech ministers viewed past nuclear accidents primarily as an obstacle to nuclear renaissance in Europe.<sup>409</sup> Qualitatively, this is a significant difference with respect to the processing of the norm, if not in connection to practical steps towards safe nuclear power generation. Whatever their reasons, it is encouraging that Prague officials remain conscious of the specters of the past. At the same time, the Czech approach to nuclear safety illustrates the possibility of governments subscribing merely to the norm's regulative aspects that retain their appeal only until there are outweighed by other instrumental reasons.

As is apparent from the text coding results in table 6.2, the scale tips more decisively in the direction of the non-safety concerns for Lithuania and Slovakia. Shockingly, despite the fact that the reactors in Ignalina were nearly carbon copies of the exploded one in Chernobyl, we see little acknowledgement by Lithuanian officials that past events in Ukraine may have an impact on the operation of other NPPs. The issue is discounted with remarks about upgrades that ought to allow the second Ignalina reactor to operate safely *if the EU norm permitted this*.<sup>410</sup> The perceived unfairness in treating the Ignalina plant translated into calls to reassess the allegedly strict decision to decommission its reactors as a requirement of accession:

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<sup>408</sup> Jan Fischer, "Speech by Prime Minister of the Czech Republic Jan Fischer, European Nuclear Energy Forum," (Prague2009); Petr Nečas, "Speech by Prime Minister of the Czech Republic Petr Nečas, European Nuclear Energy Forum," (Prague2011).

<sup>409</sup> Martin Říman, "Opportunities for Nuclear Cooperation at the European Level,"(2008).

<sup>410</sup> "Ministry of Economy Annual Report on Energy," (Vilnius2004).

We would welcome a reevaluation of this reactor's safety with a focus on the possibility of its continued operation.<sup>411</sup>

The agreement on closure of the power station was concluded at a time, when prices of electric energy were different from the present prices. We undertook to close both blocks. One of them has already been closed; the second one is to be closed by the end of 2009. But there are certain clauses in the agreement on the aid of the European Union in case of some energy problems occurring in Lithuania.<sup>412</sup>

"Some energy problems" would not be hard to find. The cost of electricity generation alone represented a key factor for a country whose infrastructure is built around easy access to cheap electricity.<sup>413</sup> Energy efficiency of buildings is lagging far behind EU standards<sup>414</sup> and the transportation network in all Lithuania's major cities is built around electric buses and trains. With the threat of rising electricity prices imminent,<sup>415</sup> the government found quick allies among the public.<sup>416</sup> This sentiment was captured by the referendum that took place in October 2008, when nearly 90 percent of participating voters demanded the plant's extended operation.<sup>417</sup> However, the participation was just shy of the required 50 percent and so the uncomfortable conversation between Lithuania and the European Commission about revising the fate of the

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<sup>411</sup> "Press Conference by Mirek Topolánek, Robert Fico, Gediminas Kirkilas and Andris Piebalgs, European Nuclear Energy Forum."

<sup>412</sup> "Press Conference after Talks of the PM Mirek Topolánek with the PM of the Lithuanian Republic, Gediminas Kirkilas.."

<sup>413</sup> The Ignalina construction costs were covered by Moscow, decommissioning funds came from the West.

<sup>414</sup> Interview with Tomas Grabauskas, Acting Head, Energy Security Policy Division, Economic Security Policy Department, MFA of the Republic of Lithuania, Vilnius, Lithuania, November 12, 2008.

<sup>415</sup> Interview with Jurgis Vilemas, Chairman of the Lithuanian Energy Institute in Kaunas, Vilnius, October 30, 2008.

<sup>416</sup> Kirkilas, "Speech by the Prime Minister of the Republic of Lithuania H. E. Mr. Gediminas Kirkilas, European Nuclear Energy Forum."

<sup>417</sup> "Referendum on Prolonging the Work of the Ignalina Nuclear Power Plant of 12th October 2008," Lithuanian Election Committee, [http://www.vrk.lt/2008\\_seimo\\_rinkimai/output\\_lt/referendumas/referendumas.html](http://www.vrk.lt/2008_seimo_rinkimai/output_lt/referendumas/referendumas.html).



plant as a consequence of public pressure was ultimately avoided. The referendum result is, however, indicative of the ambivalence with which the nuclear safety norm entered Lithuania and of the extent to which government compliance depended on sufficient funding flowing to Vilnius.

The case of weighing optimism about reactor life against the red flags raised by past nuclear accidents is even more telling in Slovakia. The only mention of an accident was by the current Prime Minister Iveta Radičová in the immediate aftermath of events at Fukushima. Otherwise, the warnings and symbolism of Chernobyl are conspicuously ignored. Instead, Radičová's predecessor insisted that the closure of two reactors in Jaslovské Bohunice was a political decision that had little to do with questions of nuclear safety.<sup>418</sup> According to Robert Fico, there were no positives for Slovakia in following the "international commitment by the previous government to close down two healthy reactors in Jaslovské Bohunice, [it] suits everyone else but not the Slovak Republic."<sup>419</sup> The perceived low credibility of nuclear safety claims by the EU also led the Slovak government to use the costly reactor closures as negotiating leverage in demands for approval of construction at the Mochovce NPP – it would sacrifice one, or the other, but not both.<sup>420</sup> The approach to nuclear safety in Bratislava purportedly mirrored the politicized treatment of the norm by Brussels. When the political stakes were higher, such as during the natural gas supply crisis of early 2009, the rhetoric escalated as well. Nuclear safety

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<sup>418</sup> "Press Conference by Mirek Topolanek, Robert Fico, Gediminas Kirkilas and Andris Piebalgs, European Nuclear Energy Forum."

<sup>419</sup> Robert Fico, "Press Conference with PM Robert Fico Following the Closure of the First Reactor at Jaslovské Bohunice," (Bratislava 2006).

<sup>420</sup> Fico, "Press Conference on the EC Opinion Regarding Construction Completion at the Mochovce Nuclear Power Plant."

was viewed as only one of many constraints and if Slovakia's economic or security interests were threatened, the government was open to compromising its commitments under this norm.<sup>421</sup>

These snapshots of the approaches to nuclear safety in three former EU candidates show that nuclear safety as a regulative norm met with resistance from governments. Czech, Lithuanian, and Slovak positions differed noticeably from those put forward by the European Commission. This may be seen as vindication for the strictness with which enlargement officials approached the issue – had the candidate countries not been pressured through membership conditionality, it is unlikely they would have followed through on the promises to close down their controversial reactors. We have to be careful, however, and keep the desire for EU membership separate from decision making in the nuclear energy sector. The resulting treaty obligations were binding for the governments but as the Slovak case illustrates, pre-accession commitments had little impact on post-accession policy.

### *Particular Questions About Nuclear Safety*

The objective of this chapter has been to test the hypothesis about anticipated government resistance to the nuclear safety norm directed at candidate countries in the course of the Eastern EU enlargement. In light of the dual focus of the broader typology, however, we have to also consider the interaction between government policies and societal preferences. The argument can become a lot more compelling, if we keep our eyes open to signs of *particular* framing of the norm as well. To this end, I extended the text analysis carried out to test the primary hypothesis about the universal/constitutive dimension to also examine whether the *universal* part of the label

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<sup>421</sup> "Press Conference Featuring the Crisis Management Team During Natural Gas Supply Interruptions," (Bratislava2009); Robert Fico, "Press Conference after the 132. (Extraordinary) Government Meeting," (Bratislava2009).

was assigned correctly. Table 6.3 provides a summary of the findings organized according to the paired coding that structured the analysis.

**Table 6.3: Coding of the Particular/Universal Dimension**

	<i>PARTICULAR NORM CODES</i>		<i>UNIVERSAL NORM CODES</i>
	Exceptional circumstances determine nuclear policy priorities	NORM ORIGIN	Interdependence and equal vulnerability to radiation (people and environment)
<b>EU</b>	0		<b>83</b>
<b>Czech</b>	0		<b>37</b>
<b>Lithuania</b>	0		<b>33</b>
<b>Slovakia</b>	14		14
	Country-specific framing of challenges and solutions; consequences of NPP closures	CONTEXT FOR NORM VIOLATION	EU-wide challenges and solutions; nuclear risks affecting nuclear and non-nuclear states alike
<b>EU</b>	<b>71</b>		63
<b>Czech</b>	<b>34</b>		15
<b>Lithuania</b>	<b>51</b>		10
<b>Slovakia</b>	<b>15</b>		9
	National interest and self-sufficiency as priorities	NORM INSTITUTIONALIZATION	Climate change / integrated environmental and energy policy, including life cycle issues
<b>EU</b>	0		<b>86</b>
<b>Czech</b>	33		<b>55</b>
<b>Lithuania</b>	<b>38</b>		<b>38</b>
<b>Slovakia</b>	<b>39</b>		33
	Local financial and energy constraints; nuclear power too special	ROLE OF LOCAL MATERIAL REALITIES	EC as nuclear policy coordinator, harmonization
<b>EU</b>	0		<b>2</b>
<b>Czech</b>	<b>10</b>		8
<b>Lithuania</b>	0		<b>11</b>
<b>Slovakia</b>	<b>7</b>		2

Even if we assume that the linkage between government rhetoric and public opinion of nuclear safety<sup>422</sup> is only indirect, the above results require explanation. The first measure is the least problematic - Slovakia was the only country to repeatedly emphasize exceptional circumstances that may surpass in significance the risks associated with nuclear power. The remaining two countries and the EU lean decisively towards the universal formulations of nuclear safety. The opposite outcome, however, characterizes the second measure contrasting country-specific and EU-wide approaches to challenges and solutions related to nuclear safety. Even the European Union is visibly conscious of the unique challenges faced by individual countries in the nuclear sector. The remaining two measures provide mixed results that raise a number of questions. We have to ask whether governments hold sway over public opinion on this count, or whether it will be the societies who restrain their leaders to institute a “boomerang effect” towards greater nuclear safety. It is only a small step from admitting the possibility of such norm evolution to having to inquire about the conditions that facilitate such shifts in either governmental or societal positions.

Detecting a pattern that does not support a trend towards universal framing of nuclear safety does not necessarily invalidate the present theoretical framework – on the contrary, it allows us to explore in greater detail the two-dimensional analytical space that it offers and uncover additional hypotheses regarding normative shifts along both the particular/universal and the regulative/constitutive continuum. It goes without saying that the programmatic objectives of governments do not arise in isolation from demands by their electorates. As a result, we can indirectly gauge the public opinion of nuclear safety by examining government positions. The next chapter will take a closer look at the delicate balancing that engages the governments as

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<sup>422</sup>As distinct from attitudes to nuclear energy.

international actors on the one hand and as inward-facing, voter-responsive institutions on the other.

### **Mission Impossible?**

It is clear that where the European Commission would have liked to build a Union-wide consensus around the subject of nuclear safety, the Czech Republic, Lithuania and Slovakia viewed the norm merely as a technical requirement, and one made unnecessarily strict at that. What does the discord mean for our assessment of this norm-proliferation dynamic initiated in the course of the Eastern enlargement?

To be sure, there was no question about the desirability of safe and reliable nuclear reactors during accession negotiations. The disagreement concerned the criteria according to which safety assessments were carried out, especially as these seemingly technical decisions led to real political and economic costs in already struggling societies. Tensions emerged as candidate countries, who had been previously subject to voluntary, peer-review safety mechanisms under the IAEA umbrella, had to comply with non-negotiable requirements that, they believed, burdened them unduly. The European Commission followed the G7-inspired consensus on nuclear energy safety worldwide and took the opportunity of locking in commitments that East European governments would not have agreed to without the added incentive of EU membership. The power of conditionality is best illustrated by the closure of Lithuania's Ignalina plant, while reactors of exactly the same design (Chernobyl-style RBMK) continue to operate in the St. Petersburg region in Russia.

The constraints on new member states were treaty based, increasing the cost of any contemplated violation. Still, the firmness with which the norm was enforced does not

necessarily correspond to its legitimacy in the target societies, nor does it prevent attempts to circumvent it in the future. This uncertainty about the prospects for the nuclear safety norm derives from its classification as regulative – the identity-based foundation that could frame compliance as an unquestioned aspect of EU membership does not exist. Instead, the norm was a *condition* of membership, meaning that once this goal was attained the revisiting of its premises was fair game.

Believers in the power of social mobilization might object that such slipping back would inevitably be curbed by public protest. Environmental movements, after all, have a history of organizing on the issue (especially in Lithuania and the Czech Republic). No wonder – the norm falls within the universal category. We must not forget, however, that no norm that entered EU candidate countries traveled in isolation from other norms. Here I do not mean competing understanding of safety by norm suppliers and receivers because in the realm of environmental protection the societal consensus happens to be considerable. Rather, nuclear safety represents only one point on the agenda of governments concerned with guarding their political-economic interests, and energy security more specifically. In other words, there are other norms that nuclear safety is constantly ranked against and, if the powerful argument could be made that a moderate compromise on reactor design or operation may help preserve a nation's sovereignty in the face of resource-dependency threats, societal resistance need not be guaranteed.

This is not to suggest that any of these developments would not be possible had the Commission not conditioned membership with the closure of Ignalina, Bohunice and Kozloduy. On the contrary, the attempts to facilitate a shift towards the constitutive cell were a sound strategy to add yet another hurdle obstructing a possible return to the regulative/particular cell, where compliance tends to be elusive. It is questionable, however, whether such a mission could

have been accomplished from the outside and against the background of continued disagreement on nuclear safety (and energy policy more generally) within the Union.

## CHAPTER 7: NUCLEAR SAFETY IN CRISIS

Nuclear accidents are a serious matter. They are dangerous, costly, they have long-term impact that travels across borders easily, and they remind people of the inherent risks associated with nuclear energy. They also have a surprising effect on the wishes and actions of those involved in the debate on nuclear safety. Environmental activists fight unsafe plants with all their might but, paradoxically, they see accidents, the bigger the better, as unique opportunities to highlight the movement's cause and achieve a nuclear-free world.<sup>423</sup> Representatives of the nuclear industry, by contrast, try hard to avert any negative publicity in order to continue their plants' uninterrupted operation.<sup>424</sup> Ultimately, the key factor curbing nuclear risks is the public opinion to which both these groups report and, by extension, societal acceptance of the nuclear safety norm itself.

The impact of nuclear safety, however, is much weaker on governments whose preferences incorporate economic and security concerns. These sensitive issues make states reluctant to give up control over the nuclear energy sector and even if there is a certain degree of consensus about safe operation of nuclear power plants (NPPs), this is underpinned by utility, rather than identity. Even if official pronouncements describe safety as an “absolute priority,” cost-benefit analysis couched as risk optimization drives official decision making on the subject. Still, because the safety-demanding public is also the voting public, governments commonly establish the regulatory environment that minimizes the risk of accidents. Past research has focused on the ability of grass roots appeals to not only bring about such practical policy improvements but also to change the underlying government attitude with regard to the norm. In

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<sup>423</sup> Interview with anonymous environmental activist, České Budějovice, Czech Republic, December 2008.

<sup>424</sup> Interview with Štefan Nižňanský, Director of the Division for A1 Reactor Decommissioning, JAVYS, Turčianske Teplice, Slovakia, April 28, 2009; Interview with Massimo Garribba, Directorate General for Energy, Luxembourg, March 23, 2009.



the case of the anti-personnel landmine ban campaign, the activist network was able to frame the norm as a question of civilian immunity, on par with human rights, making government resistance much harder.<sup>425</sup> For the present case, however, the analysis of key documents from the Czech Republic, Lithuania, and Slovakia has shown that government support of nuclear safety in the context of EU enlargement has been less than tentative. For now, the norm lacks the constitutive component and so remains distinct from the human-rights resembling norms (see table 6.2).

To be sure, societies are not immune to some level of governmental convincing either, usually through education campaigns. Public opinion is also susceptible to appeals on national interest grounds and, more recently, in consideration of the need to curb greenhouse gas emissions.<sup>426</sup> Mindful of past nuclear accidents, public endorsement is conditioned on safe operation of the NPPs. This nearly obvious statement leads to a less obvious question. If a nuclear accident represents a transformative crisis event, what other pressing situations might seem imminent enough to soften societal demands for nuclear safety? I will examine the possibility of nuclear safety shedding its universal quality (in the EU context) that brings it halfway towards the bottom right cell.<sup>427</sup> This continuation of the nuclear safety case study explores the possibility of two-way shifts between categories, and so challenges the approaches that take the universal quality of international norms for granted. It also promises to address any suspicions about an underlying teleology in the present framework.

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<sup>425</sup> Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52, no. 03 (1998).

<sup>426</sup> "Eurobarometer: Europeans and Nuclear Safety." Shu-Yi Liao, Wei-Chun Tseng, and Chi-Chung Chen, "Eliciting Public Preference for Nuclear Energy against the Backdrop of Global Warming," *Energy Policy* 38, no. 11 (2010).

<sup>427</sup> I do this instead of re-testing the hypothesis about shifts of the norm into the universal/constitutive cell, partially disconfirmed by the previous chapter.

My overarching argument points to norm content as the determinant of their palatability to societies and governments. On issues as sensitive as energy policy, we have to be able to account for conditions under which the “boomerang effect”<sup>428</sup> of converting governments to principled defense of nuclear safety could lose its power and the societies could give in to growing concerns about sky-rocketing energy prices and lacking supply. This scenario is not unlikely in a region like Eastern Europe, where most of the energy infrastructure still points eastward and dependence on Russian fossil fuels is nearly exclusive in some cases. Nuclear energy generation therefore enjoys the endorsement from governments on energy-strategic grounds, in addition to political-economic ones. Both these arguments resonate loudly with the public, independent of the desire to live in an environment free from the effects of harmful radiation.<sup>429</sup> As a result, governments must respond to domestic pressures for affordable and reliable electricity sources. Meanwhile they are subject to international agreements regulating day-to-day operation of their NPPs, as well as those mandating the closure of reactors that fall short on safety. Complicating matters further, ambiguities have surrounded the blending of IAEA recommendations with continued pressure from the European Commission to further specify and solidify (in legal terms) the broad international commitment to safety. Many states have viewed this regulative flux as an opportunity to voice their own interests and win their societies over in the process.

Uncertainty about the final face of nuclear safety in Europe is not without precedent or corresponding attempts at theoretical explanation. The consensus among international law scholars is that “soft” laws are often devised to gradually evolve into “harder” prescriptions that

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<sup>428</sup> Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*.

<sup>429</sup> “Eurobarometer: Europeans and Nuclear Safety.”

can ultimately become codified and readily enforceable.<sup>430</sup> This gradual norm development is influenced by state and non-state actors alike. The hard-law outcome, however, is not guaranteed. Soft laws and the norms they enshrine may retain the more informal status without detracting from their effect on states.<sup>431</sup> In the most compelling case of non-binding agreements facilitating momentous change, the Helsinki accords of 1975 ultimately empowered the dissident movement in the Eastern bloc and contributed to the fall of the Soviet empire.<sup>432</sup> In a different recourse to soft law, the International Labor Organization has focused on issuing non-binding recommendations, rather than mandating ratification of treaties to circumvent obstacles to domestic approval and so retained its institutional prestige and impact.<sup>433</sup> How far the development of international legal instruments will advance depends on the level of consensus that the parties to each prospective treaty can reach.

The IAEA Convention on Nuclear Safety seeks to maximize the impact of this consensus, trading-off the benefit of a finite document for dynamic and interactive improvements in safety standards:

The Convention is an incentive instrument. It is not designed to ensure fulfillment of obligations by Parties through control and sanction but is based on their common interest to achieve higher levels of safety which will be developed and promoted through regular meetings of the Parties.<sup>434</sup>

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<sup>430</sup> Alan E. Boyle, "Some Reflections on the Relationship of Treaties and Soft Law," *The International and Comparative Law Quarterly* 48, no. 4 (1999); Robyn Eckersley, "Soft Law, Hard Politics, and the Climate Change Treaty," in *The Politics of International Law*, ed. Christian Reus-Smit (Cambridge: Cambridge University Press, 2004).

<sup>431</sup> Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000).

<sup>432</sup> Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism*.

<sup>433</sup> Abbott and Snidal, "Hard and Soft Law in International Governance."

<sup>434</sup> "Convention on Nuclear Safety: Background," International Atomic Energy Agency, <http://www-ns.iaea.org/conventions/nuclear-safety.asp?s=6&l=41>.

The European Commission, by contrast, has sought to supplement the IAEA safety fundamentals with a legal certainty that would facilitate enforcement at least within the Community. The member states, as we found out previously, responded with objections about undue constraints on their ability to regulate the nuclear installations on their territory. What does this mean for the evolution of the norm away from a soft law and towards greater enforceability? I will argue in this chapter that rather than becoming “harder” over time, the soft law of IAEA recommendations has interfered with attempts to deepen the norm’s reach in the European context. I will also demonstrate that the sense of crisis, as perceived by states in the (former) EU candidate pool, has been decisive for the relative prioritization of the nuclear safety norm. This may not have been surprising in the wake of Chernobyl, or more recently Fukushima. Crises, however, can work as wake-up calls in ways that do not necessarily lead to a fortification of the norm. Further development of the Lithuanian and Slovak case studies can provide compelling evidence for an argument about the effect of crisis on norm content in instances where states have sought to respond to adversity by *diluting* the norm. Such (non)events are relevant for the classification of nuclear safety in the present typology and for our answers to questions about government-society interaction on questions of nuclear energy, environmental protection, and state security.

### **Critique of Practical Reasonability**

Despite the recent EU success in concluding a framework directive regulating nuclear safety, the norm remains in flux. The discord uncovered in the preceding text analysis illustrates this vagueness. With regard to the norm’s regulative quality the dividing line runs between the governments’ and the EU position (table 6.2). Matters are more complicated in the

universal/particular realm (table 6.3). We have to keep in mind that this dimension describes the acceptability of norms to societies and government documents provide only a secondary glimpse of societal attitudes. Yet, the decisiveness with which the East European cases challenge the universal impact of nuclear safety is striking. Formal commitments aside, Slovakia privileged exceptional circumstances over concerns about shared vulnerability to radiation in the government-dominated debate about nuclear safety. Lithuania clamored about the non-nuclear consequences of its plant closure at the expense of integrated energy/environmental policy. What lies behind this state-perceived amenability of the nuclear safety norm to particularistic challenges? Again, we need to look for answers in the nature of the norm itself.

The IAEA Convention on Nuclear Safety (Convention) is a legally binding document. That sounds impressive in the often limited-reach world of international law. A closer look at its content, however, reveals that the main commitment it enshrines is peer review among states party to the Convention. "Detail is not conducive to agreement."<sup>435</sup> Even this level of obligation is a significant improvement over intransparencies of the pre-Chernobyl era.<sup>436</sup> But for the most part, the Convention relies on secondary instruments that are applied with various degrees of flexibility. At the most non-compromising level, the fundamental safety principles, ten in total, lay out the core priorities for devising nuclear safety policy. They are

binding on the IAEA in relation to its operation and on States in relation to operations assisted by the IAEA. States or sponsoring organizations may adopt the principles, at their own discretion, for application to their own activities.<sup>437</sup>

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<sup>435</sup> Antje Wiener, "Contested Compliance: Interventions on the Normative Structure of World Politics," *European Journal of International Relations* 10, no. 2 (2004).

<sup>436</sup> Interview with Štefan Nižňanský, Director of the Division for A1 Reactor Decommissioning, JAVYS, Turčianske Teplice, Slovakia, April 28, 2009

<sup>437</sup> IAEA, "Fundamental Safety Principles / Safety Fundamentals," IAEA Safety Standards Series No. SF-1 (Vienna: International Atomic Energy Agency, 2006), Preface.

The fundamental principles contain no references to the crucial technicalities of nuclear safety, as they were deliberately drafted “with the non-specialists in mind,” namely the politicians responsible for decisions about the uses of nuclear energy. As their name suggests, they provide the basis for more detailed recommendations: the General Safety Requirements, which outline the basic standards and focus on narrower areas of nuclear policy, and the even more targeted, technical, but also à la carte General Safety Guides. The regular review mandated by the Convention makes this staggered system of requirements the core content of nuclear regulators’ agenda, and the resulting regime that governs the states’ respective reputations holds considerable sway over the consistency with which the standards are applied.

Their effectiveness, however, extends only as far as the consensus among the states that are party to the Convention. The intentionally underspecified safety fundamentals are an attempt to preserve this delicate balance of state interests, while maximizing the strength of the regulatory framework surrounding nuclear safety. The quest for common ground has greater impact than the lowest common denominator policy. It reflects a commitment to at least limited principles consistent with the universal qualities of nuclear safety – acceptable to all governments and societies and deriving from human vulnerability to radiation. It is in the interest of NPP operators to keep them safe and prevent accidents that may result in public rejection of nuclear power altogether. At the same time, governments have to guard their reputation as reliable partners, conscious of the trans-boundary consequences of uncontrolled radiation releases.

The question of how safe is safe enough therefore permeates all deliberations on the subject and has led to the formulation of the ALARA principle. This “rule of thumb” is perhaps

the most prominent among the ten IAEA safety fundamentals. It stands for “as low as reasonably achievable” and seeks to optimize protection of people and the environment. Incorporated into the body of the Convention it states that “the Contracting Party shall ensure that all *reasonably practicable improvements* are made as a matter of urgency to upgrade the safety of the nuclear installation.”<sup>438</sup> The principle has been an indispensable tool in the hands of nuclear regulators seeking to combine the outcomes of design-based, probabilistic, and deterministic risk assessment.

Unfortunately, it applies with much greater ambiguity to decisions about the optimal lifetime of entire plants than it does to relatively simpler calculations of maximum permissible radiation exposure by nuclear sector workers. Even the European network of ALARA professionals has recognized the underlying vagueness that may have contributed to the longevity of the principle<sup>439</sup> but also resulted in some undesirable flexibility in its interpretation. The network’s 2006 meeting concluded that “there is no universally agreed definition of what ALARA culture is, despite the wide acceptance of the need for such a culture.” The group responded with a proposed definition that takes us beyond a simple spelling out of the acronym, if only slightly.

Based on scientific knowledge and characterized by risk awareness, optimization of radiation protection is an ongoing and iterative process, to keep

- the magnitude of individual doses,
- the number of people exposed and
- the likelihood of potential exposure ALARA,

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<sup>438</sup> Emphasis added. Article 6. *Convention on Nuclear Safety*.

<sup>439</sup> Phrased in terms of permissibility, rather than achievability (abbreviated as ALARP) it featured prominently already in Commission, "Communication of the Commission: Assurance of Safety of Nuclear Power Plants - Objectives and Methods."

taking into account technical, economic and societal developments, requiring qualitative and quantitative judgments and involving all parties having an interest in or concern about an exposure situation.<sup>440</sup>

The latter part of the definition qualifying the principle with references to economic and societal developments is the most policy sensitive but also the most problematic. Similar language was used in the text of the IAEA Convention, creating the root of the challenges faced by Lithuanian and Slovakia en route to EU accession.

If such upgrading cannot be achieved, plans should be implemented to shut down the nuclear installation as soon as practically possible. The timing of the shut-down may take into account the whole energy context and possible alternatives as well as the social, environmental and economic impact.<sup>441</sup>

While the international expert community has relied on the impact of lessons from past accidents and the inherent motivation to operate nuclear reactors safely, the “social, environmental and economic” determinants of government positions on nuclear safety have been under siege from many directions. The most dramatic effect came in the form of challenges to energy security of already vulnerable states. As much as the Chernobyl crisis highlighted priorities previously ignored in defining nuclear safety standards, the near-emergency that surrounded Slovakia’s energy sector in 2009 and the long-term crisis faced by Lithuania shaped the willingness with which the two countries accepted the EU-mandated shutdown of their main electricity sources. From the East European vantage point, a previously universally applicable norm suddenly

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<sup>440</sup> European, "Definition of "Alara Culture", " (European ALARA Network, 2011).

<sup>441</sup> Article 6. *Convention on Nuclear Safety*.



appeared much less so. Or rather, the answer to what was “reasonable,” “practical,” and “achievable” became a matter of opinion.

### **Between a Rock and a Hard Place**

Optimization of nuclear-energy related risk became salient to East European governments twice in relatively quick succession. First, EU membership conditionality presented Lithuania, Slovakia, as well as Bulgaria, with a new conception of what constitutes reasonable levels of threat and how they are assessed. These countries’ previous participation in the IAEA standard-developing process based on best practice, peer review and administrative checks was supplemented by the strong messages coming from the European Union in the wake of the 1992 G7 summit in Munich. The political charge that this added to the issue changed discourse on safety throughout the region.<sup>442</sup> The decision was made that the VVER 230 reactors (constructed in Bulgaria and Slovakia between 1970 and 1974) and the RBMK reactors (of Chernobyl infamy, at the time operating in Lithuania, Ukraine and Russia) were unsafe *in principle* – they lacked an outside containment shield.<sup>443</sup> This made them vulnerable to external attacks, a concern aggravated in 2001, and at risk for uncontrolled radiation releases following an explosive accident.

Pressure and financing from the West facilitated immediate upgrades to these reactors, considerably reducing their operating risks.<sup>444</sup> Yet, the design-based risk assessment that highlighted the absence of containment as a crucial weakness outweighed the probabilistic

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<sup>442</sup> Interviews with Vidas Paulikas, Head of Radiation Protection Department and Sigitas Slepavicius, Head of Nuclear Safety Department, VATESI, Vilnius, Lithuania, October 24, 2008.

<sup>443</sup> In addition, the reactors’ age posed a significant problem.

<sup>444</sup> M Lipar, E Muziková, and J Kubányi, "Risk-Informed Decision Making During Bohunice Np Safety Upgrading," (Vienna: International Atomic Energy Agency, 2001).

estimates of threat. This decision caused displeasure in nuclear power circles for privileging political reasons over technical arguments. The over-cautious move made for a useful public relations talking point for West-European politicians justifying the Eastern EU enlargement to their publics. It made for a much harder sell on the other side of the EU border. Lithuanian and Slovak governments found themselves between the proverbial rock of domestic energy-security needs and a hard place, represented by membership-conditioning demands from Brussels.

The second opportunity for Slovakia and Lithuania to reevaluate their commitment to decommission the less safe reactors came as the countries' dependence on Russian fossil fuels grew more pressing. In Slovakia the reminder about vulnerability to interruptions in Russian natural gas supplies came during the crisis of January 2009. The dispute between Ukraine and Russia started about a week after the shutdown of the second reactor in Jaslovské Bohunice and made the restarting of its operation highly tempting. In Lithuania the precarious energy situation was the result of gradually aggravated combination of the looming Ignalina closure deadline with growing prices of natural gas that multiplied the non-nuclear cost of this obligation.

The two crisis case studies that follow will examine the communication between governments and their respective publics, as well as pronouncements intended for the EU audience. I will look for signs of commitment to safety on the one hand and inclinations to compromise it on the other. I will argue that in Slovakia the compliance with EU-candidacy obligations was the default and the government was forced to use strong language to appeal to the public and to justify its arguments in the context of the Accession Treaty. The discursive space for such argumentative forcefulness opened up as a result of the escalating gas crisis. The protracted struggles in Lithuania, by contrast, permitted the development of not only official but also societal opposition to the EU-mandated requirement for RBMK reactor closure. Although

both attempted reformulations of the nuclear safety norm and the related ALARA principle were ultimately ineffectual, they provide crucial evidence about the feasibility of normative shifts *away* from the universal cell in the proposed typology of international norms.

### *The Slovak Emergency*

In early January 2009, several days after Slovakia stopped receiving deliveries of Russian natural gas, I arrived in Bratislava to conduct interviews at the Ministry of Economy and the Nuclear Regulatory Authority. My goal for these appointments, which my interviewees kindly kept despite the unforeseen circumstances, was to discuss issues surrounding the decommissioning of the VVER 400-230 reactors in Jaslovské Bohunice. By then, the “crisis committee” (consisting of the Prime Minister, the Minister of Economy, heads of Slovak utilities and other relevant officials) was holding daily press conferences about viable and appropriate responses to the crisis. The option of restarting the second reactor grew in appeal and my research topic was becoming more current by the minute.

On January 10, the Slovak government announced that it decided to initiate the technical preparations needed to restart the still warm reactor, with the explanation that the stored gas supplies were dwindling and the resolution of the Russian-Ukrainian dispute was nowhere in sight. Slovakia had to be prepared to use what energy capacities it had. And, the lay public was told, restarting a reactor requires more than a flick of a switch. Prime Minister Fico, however, had more explaining than that to do:

I emphasize that this reactor was not shut down at the end of 2008 for safety reasons – it meets all criteria, it had been monitored and is still being monitored

by all relevant international institutions, and its closure was the outcome of a political decision, because the previous government committed to shutting it down in order to join the European Union. We accept full responsibility and realize that in taking this step we violate the conditions of the Accession Treaty but we do so at a time of crisis, and I would even describe this step as remedying an emergency situation. The damage that will be done to the Accession Treaty is much smaller than the damage that would have threatened Slovakia if we had not done this. This is the principle of emergency. We simply had to do it.<sup>445</sup>

Contrary to the Prime Minister's implied message, however, the crisis did not have a substantive impact on his government's preferences. Forceful language had accompanied his pronouncements in the past already, especially regarding the closure of Bohunice and planned completion of two additional reactors in Mochovce.<sup>446</sup>

We begin a period of Slovakia's energy dependence on foreign sources. For the new government this is a big test. A test caused by stupidity and disregard for national interests. We came to Jaslovské Bohunice not only to witness this sad event [reactor closure] but also to make it known ... that this is not this plant's last day. We are committed to the obligations accepted by the previous government – to close both reactors. Yet, we hope that since both reactors are in excellent technical condition, the time may come when they produce electricity for Slovakia again.<sup>447</sup>

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<sup>445</sup> Fico, "Press Conference after the 132. (Extraordinary) Government Meeting."

<sup>446</sup> Fico, "Press Conference with PM Robert Fico Following the Closure of the First Reactor at Jaslovské Bohunice."; "Press Conference by Mirek Topolánek, Robert Fico, Gediminas Kirkilas and Andris Piebalgs, European Nuclear Energy Forum."; "Press Conference Featuring the Crisis Management Team During Natural Gas Supply Interruptions."; Fico, "Press Conference after the 132. (Extraordinary) Government Meeting."

<sup>447</sup> Fico, "Press Conference with PM Robert Fico Following the Closure of the First Reactor at Jaslovské Bohunice."

As this statement shows, Prime Minister Fico's preparedness to question the content of the nuclear safety norm as applied in the course of EU accession had deep roots. When he was asked in July 2008 whether his government intended to honor the commitment regarding Bohunice reactor closure, he answered mysteriously that he "preferred to leave the back door open" on that question.<sup>448</sup>

An opportunity to open that back door arose as the gas-supply crisis put Slovakia at high risk for energy supply failures. Fico had previously argued that small countries like Slovakia have to have respect for international law but "in exceptional situations we might have to view this differently."<sup>449</sup> The sudden shortage of gas seemed to have brought about such a situation and warranted relegating the international obligations on nuclear safety to the back burner. A dramatically posed question left little room for qualifying Fico's distaste for the Accession Treaty: "do we want to be cold and in the dark or do we want to be patted on the back abroad for respecting the Accession Treaty?"<sup>450</sup> The emergency situation of January 2009 merely shifted the range of plausibility and opened up room for new arguments that highlighted immediate-term security and political-economic priorities over distant (and some would say overstated) concerns about nuclear safety.

The implications of the decision to apply for an emergency operating license at Bohunice were two-fold. First, it enveloped Slovakia in the familiar aura of disregard for international agreements that had marked the pre-1998 period. Partially with this history in mind, the response from the European Commission was uncompromising – legally this was not an option for Slovakia. Fico's government, however, was banking on the very long time that it would take to

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<sup>448</sup> Fico, "Press Conference on the EC Opinion Regarding Construction Completion at the Mochovce Nuclear Power Plant."

<sup>449</sup> Ibid.

<sup>450</sup> Miroslav Kern, "Fico Is on Good Terms with the Nuclear Lobby. [Fico Si S Jadrovou Loby Dobre Rozumie]," *Sme*, January 14 2009.

adjudicate the issue, should the Commission choose to take Slovakia to Court. The distant horizon for these legal ramifications was at a sharp contrast to the sense of immediate-term crisis that had permeated the Slovak economy by then. The second important consequence of Slovakia's flirting with the idea of restarting the nuclear reactor against EU's will was felt most strongly in Lithuania. There the political leadership was holding their breath to see the outcome of the situation and hoping for a precedent that would allow them to hold on to their reactor as well (due to be shut down in December 2009).

Without doubt, my interviews in Bratislava during this time were highly informative. Not only were my contacts extremely helpful, coincidence also seemed to be on my side. While I was interviewing the head of the Energy and Resource Policy Department, one of his colleagues entered his office and, completely disregarding my presence, inquired about an accident at a coal-burning power plant that had happened two days ago and purportedly aggravated the imminent crisis. The colleague wanted to know how long it would take to have the thermal plant operational again. The media had been informed that it would take three weeks but the response of my interviewee made it clear that the time period would be much shorter (about a week).<sup>451</sup> This exchange revealed that the government had been providing conservative estimates to the press to heighten the sense of crisis, which it was using as the primary argument for violating agreements with the EU. Such justifications had to be made not only to build a legal argument for the evolving policy but also to justify it to the Slovak public, who had learned about the sanctity of accession documents by that time.

The effectiveness of this backtracking on nuclear safety commitments remains questionable. The counter-pressure from the European Commission was not without impact, and

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<sup>451</sup> Skeptics in Slovak politics speculated also about the coincidence of the coal plant having a limited-scope accident in the middle of the gas crisis and debates about Bohunice reopening.

“solidarity” from Slovakia’s western neighbors in sharing gas supplies took the wind from the Prime Minister’s crisis sails. Once Slovakia gained access to French and German gas supplies (from a pipeline bypassing Ukraine), the main negotiation objective of renewed energy security was attained, if temporarily. By the end of that critical week, I was interviewing the head of the EU affairs unit at the Nuclear Regulatory Authority who had just returned from Brussels. As I sat in his office, again briefly invisible, he informed a colleague over the phone that the Slovak government had decided not to restart Bohunice after all. Soon thereafter the information appeared in the press and many sighed with relief.

The Slovak gas crisis turned out quite instructive for the student of nuclear safety, and environmental norms more generally. It made clear that economic and energy-security interests were at the forefront of the priorities pursued by the Slovak government. It is apparent that other objectives, besides safety, became salient during the energy crunch. Was this challenge to the norm accompanied also by an increased risk of nuclear accident? Ambiguities of the ALARA principle aside, to answer this question, we need to know whether turning nuclear plants on and off again, as the Slovak PM intended to do, increases the risks associated with their operation. Dana Drábová, the head of the Czech nuclear safety authority and also the president of the Western European Nuclear Regulators’ Association explained that while it does not pose any *inherent* threats, it does entail an increased *risk* of an accident (a distinction she was quite adamant about). It is analogous to most plane crashes occurring during take-off and landing, where human error and numerous other factors interfere. “The rest is just autopilot,” she said.<sup>452</sup> Policy makers, however, tend to know little about the technical details with far-reaching environmental impact and the public they address trails even farther behind them.

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<sup>452</sup> Interview with Dana Drábová, Head of the Nuclear Safety Authority, Prague, Czech Republic, January 23, 2009.

Although the crisis press-conference pronouncements did not include direct references to the ALARA principle, its main premise featured prominently in the decision by the Slovak Nuclear Regulatory Authority to approve restarting the reactor. In giving its consent, the Authority faced the question of “what is the greater evil here,” along the lines of the Prime Minister’s concerns about a potential black-out.<sup>453</sup> Since there were not any inherent risks to this step and the potential social and economic impact was great, the Authority saw no obstacles to issuing the necessary permit. Operation of the reactor for another few weeks seemed *reasonable*. Fortunately, this playing with fire (nuclear and international) did not cause any serious incident and on the decidedly positive side, it shed light on the process of environmental norm evolution at times of crisis, enriching both the theoretical and empirical account under the present framework.

### *Lithuania’s Energy Crunch*

For Lithuanians, the question of nuclear energy has been loaded with symbolism and historical meaning. As the country inched towards independence in the late 1980s, the anti-nuclear movement helped channel the anti-Soviet sentiment, in addition to opposing a proposed third reactor at Ignalina. The environmental movement was not just a simple surrogate for Lithuania’s quest for independence but it helped catalyze the desire for sovereignty.<sup>454</sup> The Chernobyl-twin reactors provided a very visible focal point in this struggle. Opposing the construction of unsafe reactors became tantamount to opposing the system that produced

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<sup>453</sup> Interview with Mikuláš Turner, Director, Division of International Relations, Nuclear Regulatory Authority of the Slovak Republic, Bratislava, Slovakia, January 16, 2009.

<sup>454</sup> Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States*.



them.<sup>455</sup> Paradoxically, as the Lithuanian desire for independence grew, the meaning of the Ignalina plant changed as well. Trying to stem the secessionist tides in the Baltics, Moscow initiated an energy blockade in 1991 and suddenly the Ignalina plant became Lithuania's lifeline. It continued to fill this role even after independence was attained, as the country had to cope with sudden exposure to world prices for energy imports from Russia. A simple story of environmental activism with roots to the post-Chernobyl period therefore would not provide an accurate account of Lithuanian attitudes to nuclear power. The topic evokes more than environmental or political-economic concerns – it is directly tied to Lithuania's perceptions of its sovereignty and the sentiment permeates the society well beyond governmental circles.

The political salience of the issue did not wane over time either. The national-strategic view of nuclear energy likely affected the results of the October 2008 referendum, asking voters whether they supported the EU-mandated closure date of the Ignalina plant (scheduled for December 2009). The plebiscite was ultimately invalid because slightly fewer than 50 percent cast their vote. Of those who did, however, almost 90 percent expressed support for continued operation of the one remaining reactor.<sup>456</sup> Arguably, the public was sensitive to further increases in the cost of electricity, which would impact common Lithuanians directly.<sup>457</sup> Prime Minister Kirkilas described the difficult situation in his speech at a 2008 European Nuclear Energy Forum meeting:

There is an increasing public pressure in Lithuania to extend the life of Ignalina NPP for as long as it can be safely operated. The Government presently sees no

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<sup>455</sup> Interview with Leonardas Rinkevicius, Professor, Department of Sociology, Kaunas University of Technology, Kaunas, November 6, 2008.

<sup>456</sup> "Referendum on Prolonging the Work of the Ignalina Nuclear Power Plant of 12th October 2008."

<sup>457</sup> Interview with Jurgis Vilemas, Chairman of the Lithuanian Energy Institute in Kaunas, Vilnius, October 30, 2008.

real possibilities to bridge the energy security gap of 2009 to 2012. I believe that a different decommissioning regime could be discussed among the EU family members as an alternative to the immediate shutdown.<sup>458</sup>

From the one-dimensional measure that the referendum provided, however, it is difficult to gauge the opinion of nuclear safety as distinct from that on nuclear energy more broadly. To pinpoint the interaction between perceptions of the Ignalina plant's safety on the one hand and the desirability of its closure on the other, I conducted a representative survey simultaneously asking about the safety and future of Ignalina.<sup>459</sup> The results are captivating and point to other determinants of energy-mix preferences, than just the perception of safety.

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<sup>458</sup> Kirkilas, "Speech by the Prime Minister of the Republic of Lithuania H. E. Mr. Gediminas Kirkilas, European Nuclear Energy Forum."

<sup>459</sup> With the assistance of the very responsive public opinion research institute, Vilnius. They carry out a monthly representative survey of the Lithuanian population, allowing researchers to add their own questions. This provides easy access to a large sample of respondents and timely answers to pressing questions, like the one examined here.

**Table 7.1: Lithuanians on the safety and future of Ignalina<sup>460</sup>**

*Question: Please select one of the following options that characterizes your opinion on the Ignalina nuclear power plant most accurately:*

	N	%
1. I believe the plant is safe and I think that its operation should be extended beyond 2009	522	52,1%
2. I believe the plant is safe but its operation should cease next year	85	8,5%
3. I believe the plant is NOT perfectly safe and its operation should cease next year	57	5,7%
<b>4. I believe the plant is NOT perfectly safe but I think its operation should be extended beyond 2009</b>	243	<b>24,3%</b>
5. <i>Don't know /no answer</i>	94	9,4%
Total	1001	100,0%

Source: Original Data. Omnibus Survey. 2008.

A look at the history of nuclear energy in Lithuania provides the explanation of this apparent disregard for safety. Contrary to the Prime Minister's announcement in Prague, a considerable proportion of voters demanded its continued operation, irrespective of whether this could / would be done as safely as possible. It turns out, *some* level of risk from the plant seems tolerable to a quarter of Lithuania's population, if counterbalanced with reduced risk of energy dependence on Russia and infringement on the country's policies from Brussels. Clearly, the relations with Russia (as weighed against those with Europe) shaped not only the behavior of the government but also that of the broadest public.<sup>461</sup> Aside from being highly informative about the development of nuclear policy in Lithuania, these findings document the possibility of

<sup>460</sup> Representative survey of Lithuania's population, November 7, 2008.

<sup>461</sup> Interview with Petras Austrevicius, Former Chief Negotiator of Lithuania's accession to the EU and Member of Seimas (Lithuanian Parliament), Vilnius, Lithuania, September 19, 2008.

normative shifts within the typological framework proposed here. The Lithuanian case illustrates the delicate trade-offs between short- and long-term foreign policy goals, intertwined with historically rooted insecurities and the need to guard the hard-won independence. Yet, to complete the argument about potential shifts of norms away from the seemingly desirable universal cell, we have to show that the nuclear safety norm had been a priority for Lithuania until it got replaced by other concerns. I suggest that this occurred as an after-effect of the protracted crisis.

A number of nuclear scientists, government officials, and members of the EU-accession negotiations team whom I interviewed in Vilnius described the closure of the Ignalina nuclear plant as a product of political pressures from the West.<sup>462</sup> But to them this perspective is consistent with commitment to nuclear safety. They argued that Ignalina was safe enough, “it had been allowed to operate under strict IAEA standards after all.”<sup>463</sup> Still, in accepting the parallel EU / G7 standards, Lithuania was willing to respect the political decision to close down its NPP, especially if this opened up flows of financial support for decommissioning.<sup>464</sup> The government accepted the new norm, even if just as a trade-off for EU membership, and intended to follow through on its obligations.<sup>465</sup> The question became highly politicized only gradually.<sup>466</sup> In fact, the Ignalina Protocol accompanying the Accession Treaty was preceded by the “cheap agreement” to close down Ignalina. This first tentative step towards decommissioning signified

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<sup>462</sup> Interview with Petras Austrevicius, Former Chief Negotiator of Lithuania’s accession to the EU and Member of Seimas (Lithuanian Parliament), Vilnius, Lithuania, September 19, 2008; Interview with Egidijus Urbonavicius and Rolandas Urbonas, Lithuanian Energy Institute, Kaunas, November 11, 2008.

<sup>463</sup> Interview with Tomas Grabauskas, Acting Head, Energy Security Policy Division, Economic Security Policy Department, MFA of the Republic of Lithuania, Vilnius, November 12, 2008.

<sup>464</sup> Interview with Klaudius Maniokas, Professor of Political Science, Vilnius University and former Deputy Chief Negotiator of Lithuania’s to the EU, Vilnius, Lithuania, October 14, 2008.

<sup>465</sup> Interview with Petras Austrevicius, Former Chief Negotiator of Lithuania’s accession to the EU and Member of Seimas (Lithuanian Parliament), Vilnius, Lithuania, September 19, 2008.

<sup>466</sup> Interview with Jurgis Vilemas, Chairman of the Lithuanian Energy Institute in Kaunas, Vilnius, October 30, 2008.

the initially low profile of the issue at the outset. According to the country's Chief EU Negotiator, "even the EBRD was surprised to see Lithuania give in so easily."<sup>467</sup> In other words, the norm as formulated by the G7 (and later the EU) has not always been a problem for Vilnius.

The government (and societal) commitment began to waver only when gas prices increased rapidly and when Russia's cross-border forays to assert its power<sup>468</sup> raised worries about the security of gas supply, which was to replace nuclear energy.<sup>469</sup> These concerns were further magnified as the prospect of a new nuclear plant ran up against the realities of fifteen-year construction and certification period,<sup>470</sup> in addition to sky high investment costs.<sup>471</sup> The nuclear safety norm has therefore been correctly classified as universal but the developing circumstances that highlighted a sense of crisis in Lithuania led to a rebalancing of short-term and long-term priorities.

Not only should we not assume that all international norms possess the universal quality, we also cannot count on them remaining so, once they have been classified as such. Lithuania provides a rare example where a widespread environmentalist opposition to unsafe reactors gradually evolved into attitudes marginalizing the nuclear safety norm. Both the government and sizable groups within the society took note of political-economic and energy-strategic developments to which nuclear energy seemed an easy answer. First driven by the crisis of Chernobyl, the Lithuanian preferences eventually morphed under the prolonged crisis that the country faced in its position of energy dependence on Russia and isolation from the rest of

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<sup>467</sup> Interview with Petras Austrevicius, Former Chief Negotiator of Lithuania's accession to the EU and Member of Seimas (Lithuanian Parliament), Vilnius, Lithuania, September 19, 2008.

<sup>468</sup> In Georgia in 2008, most prominently.

<sup>469</sup> "Press Conference by Mirek Topolánek, Robert Fico, Gediminas Kirkilas and Andris Piebalgs, European Nuclear Energy Forum."

<sup>470</sup> "Considerations to Launch a Nuclear Power Programme," (Vienna: IAEA, 2007). Interviews with Vidas Paulikas, Head of Radiation Protection Department and Sigita Slepavicius, Head of Nuclear Safety Department, VATESI, Vilnius, Lithuania, October 24, 2008

<sup>471</sup> Interview with Egidijus Urbonavicius and Rolandas Urbonas, Lithuanian Energy Institute, Kaunas, November 11, 2008.

Europe. The case also hints at the insufficiency of consensus-based international instruments on nuclear safety and the reasonability of EU-based efforts to codify the existing framework, despite resistance from member states who fear they may face the Lithuanian conundrum themselves.

### **How Not to Rest on Laurels**

My typology, populated by cases of minority rights and nuclear safety, in addition to anti-corruption and human rights, redraws the previously simplified picture of the norm proliferation landscape. Existing work on norm cascades, spirals, and boomerangs describes the diffusion of norms as an inherently dynamic process but it views the norms themselves through a surprisingly static lens. Once we turn our sights to norm content, it is impossible to avoid questions about norm transformation and the resulting shifts across the cells in the current framework. From the history of some international norms, such as gender equality, we know that their evolution is not linear.<sup>472</sup> Governments, societies, and institutionalized non-state actors have been deeply involved in these transformations, each of them uniquely positioned to facilitate the spread of a norm, to impede it, or to initiate further development of its content. With implications for its future success, of course.

In principle, all norms are subject to such weathering over time. Even a norm as widespread as human rights often faces blatant violations and it has not been immune to discursive cooptation by dominant states seeking to accommodate their foreign policy objectives.<sup>473</sup> From a different direction, it has been challenged by the “politics of exceptional

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<sup>472</sup> Krook and True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality."

<sup>473</sup> Jan Hancock, "Woodrow Wilson Revisited: Human Rights Discourse in the Foreign Policy of the George W. Bush Administration," *European Journal of International Relations* 16, no. 1 (2010); Miles Kahler, "Legitimacy,

circumstances” that led governments around the world to curtail freedoms in the name of the security-liberty trade-off in the war against transnational terrorism.<sup>474</sup> Still, so far the human rights norm has survived – as a counterfactually valid principle that does not cease to exist when violated.<sup>475</sup> It takes more than the occasional delinquent to kill a norm. Such deterioration occurs as a more complex process of misalignment between norm content and the broader normative environment.<sup>476</sup>

The nuclear safety case in Europe offers a magnified look at the underlying tensions that lead to norm contestation. The “normative environment” characterized by attempts to codify nuclear safety at the EU level was becoming stricter. Meanwhile, the changing (energy) security landscape grew ever fiercer. This situation qualified as a crisis – it “raised the stakes for norm interpretation as time constraints reduced the social feedback”<sup>477</sup> that normally helps police norm compliance. In response, discursive attacks by government officials on nuclear safety were issued to garner further support from the societies. In Lithuania, the protracted crisis produced a more coherent demand for an “exception” under the norm, whereas in Slovakia the government could rely on tacit support from the public only and had to exert most of the pressure through its own rhetoric. Ultimately, the two episodes underscored the usefulness of the institutional measures put in place in the course of EU accession. The treaties anchored the nuclear safety norm deeper than the effectively voluntary framework under the IAEA and made prioritization

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Humanitarian Intervention, and International Institutions,” *Politics, Philosophy & Economics* 10, no. 1 (2011). Blair, “Full Statement to the House of Commons, 18 March 2003 ”; Toope, “Powerful but Unpersuasive?”

<sup>474</sup> James A. Piazza and James Igoe Walsh, “Transnational Terror and Human Rights,” *International Studies Quarterly* 53(2009); Eric A. Posner and Adrian Vermuele, *Terror in the Balance: Security, Liberty, and the Courts* (New York, NY: Oxford University Press, 2007).

<sup>475</sup> Friedrich Kratochwil and John G. Ruggie, “International Organization: A State of the Art on an Art of the the State,” *International Organization* 40, no. 4 (1986); Diana Panke and Ulrich Petersohn, “Why International Norms Disappear Sometimes,” *European Journal of International Relations* (2011).

<sup>476</sup> Panke and Petersohn, “Why International Norms Disappear Sometimes.”; Krook and True, “Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality.” Krook and True refer to this phenomenon as “external” dynamism of norms.

<sup>477</sup> Wiener, “Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations.”

of other non-safety objectives more difficult. The concerted effort with which Lithuania and Slovakia tried to save their limping reactors, however, points at the vulnerability of norms seemingly unquestionable at first. In this light, even the powerful commitments under the Accession Treaty should be viewed as a basket of norms that may have partially attained a universal or constitutive status but that need not remain so forever.



## CHAPTER 8: INTERNATIONAL NORMS: RULES OF SUPPLY AND DEMAND

The main gauge of international norms' success is their legitimacy. Standards that lack legitimacy cannot be effectively enforced and risk losing all their meaning.<sup>478</sup> This is a practical problem that is closely linked to a theoretical one. The legitimacy of norms cannot be assessed in isolation from the system that they constitute or from the sources of power wielded by the actors promoting them. Thus, in the global arena most norms tend to be "thinner" because of greater disparities among societies' historic and political-economic experiences that lead to norm formulation. Similarly, the process of promoting and enforcing norms internationally requires a level of consensus that is difficult to achieve without regular political contestation. Its absence in the international realm can be compensated with a momentum that sometimes follows transformative shifts in international discourse.<sup>479</sup> The liberal-rationalist agenda that emerged at the end of the Cold War provided such momentum for a near-viral spread of the norms constituting it, such as the Washington consensus and its splinter norm battling corruption. Discrediting of the main alternative to capitalist democracy reinforced these norms' visibility and states that did not enthusiastically subscribe to the new template were persistently nudged in that direction. It is no coincidence that the international gaze turned to developing countries and the post-communist region where corruption was endemic but rarely recognized as such.<sup>480</sup> The initial thrust with which this and other norms entered the global arena benefited from the absence of an alternative.

Put differently, as long as the liberal-rationalist norms sailed on the wave of a newly hegemonic discourse, they appeared universal. This consensus, however, began to unravel as it

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<sup>478</sup> Bukovansky, "The Hollowness of Anti-Corruption Discourse."

<sup>479</sup> Watershed moments, according to Martha Finnemore, *National Interests in International Society* (Ithaca and London: Cornell University Press, 1996), 136.

<sup>480</sup> Bukovansky, "The Hollowness of Anti-Corruption Discourse," 182.

became apparent that a one-size-fits-all approach would be politically unviable and ultimately unenforceable, even in the special case of Eastern Europe. Crucially, the “victors’ benefit” in promoting the value metric that provided certain norms with superiority, however brief, should not be equated with the universal quality of norms like human rights. The appeal of basic human rights derives not from the loudest voice in the international arena but from the similarity of our experience as human beings and the unchanging vulnerabilities comprehensible to all.<sup>481</sup> In a contrasting scenario, once the anti-corruption norm weathered the post-Cold War legitimization storm, its promoters responded by linking transparency to questions of underdevelopment. Eventually, confirming the key difference between the two norms, they borrowed the human rights frame to generate global appeal, if not legitimacy for anti-corruption.

Legitimacy comprises two qualities that we should view as mutually reinforcing rather than as alternatives. The first, input legitimacy, derives from the procedures and participation in norm creation and/or internalization, while the other relates to output, or the extent of purported benefits from norm-informed policies. In contexts characterized by power asymmetry, however, as is commonly the case in international norm promotion, the focus on policy outcomes may overshadow concerns with procedural aspects of norm adoption. In the case of the Eastern EU enlargement, the membership conditionality clause inadvertently led to precisely such an unbalanced focus on formal policy change with little room for legitimating debate. The template of “unconditional” accession requirements simply was not amenable to negotiation, not even much discussion. This approach to multilevel negotiations is not new in the European Union - “the ‘output’ legitimacy of regulations is frequently stressed, even if the ‘democratic deficit’ of

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<sup>481</sup> For a similar argument about the human equality norm see Finnemore, *National Interests in International Society*, 135.

the mode of arriving at the decision is admitted.”<sup>482</sup> In the context of the enlargement, this dynamic might have seemed like an outright imposition of West European values on candidate countries. However, the latter’s vocal demand for credibility-building constraints made the asymmetric arrangement possible, temporarily legitimate, and also potentially damaging.

This dissertation has called into question the tendency of influential norm promoters to treat their export “goods” as universally applicable. It turned to the story of EU enlargement to demonstrate the flaws in such a generalizing approach. The task was made especially difficult by the unique political-historic context in which the expansion of the European community unfolded – although the transferred norms were not universal, they could be (and were) treated as such because of the desirability of EU membership to candidate countries. So, if the norm suppliers and norm demanders both agreed that they were part of the same club, that they subscribed to the same values, and shared the same overarching vision for the future of Europe, what is the basis for questioning the strategies they chose in sharing the normative commitment entailed in EU membership? Simply put, they tried too hard.

In the human rights context, Thomas Pogge has argued that universality of norms does not require uniformity in their fulfillment.

We should allow that human rights can be realized in other ways, that secure access to their objects is really what matters... There is no good reason to insist that such secure access must be maintained in the same way everywhere on earth.<sup>483</sup>

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<sup>482</sup> Friedrich Kratochwil, "On Legitimacy," *International Relations* 20, no. 3 (2006): 302.

<sup>483</sup> Pogge, *World Poverty and Human Rights*, 46e.

In Europe, however, the candidates had to adopt 80,000 pages of EU legislation in full. Such were the conditions of membership and, effectively, uniformity in norm implementation became the primary goal. The main reason Pogge, along with weak cultural relativists, calls for “flexibility” in putting forth demands for human rights protection worldwide is the respect for underlying cultural diversity, which, if ignored, could pose ethical challenges and jeopardize the delicate mission altogether. Lacking such sensitivities, the EU enlargement unfolded under the unnecessary and faulty assumption that any relevant differences between the old and prospective members could be overcome by the unifying force of institutional transformation.

Confirming this, the reach (or interest) of the European Commission, did not extend beyond observing formal change. More importantly, the periodic assessments by the Commission looked for positive change, acknowledged difficulties, and even issued warnings. Rarely did its officials consider the causes behind any lags in compliance. The question of alternative normative structures that may have competed with those streaming in from Brussels was irrelevant in a process that lacked meaningful avenues for their incorporation. This strict and ambitious approach produced remarkable results as national parliaments passed laws at record speeds.<sup>484</sup> Somewhere along the way, however, the Eastern Europeans realized that they might not have fully anticipated the extent of the changes that they would be expected to undergo. Meanwhile, their West European counterparts learned with surprise that even basic rules about the geographic origin of products may suddenly cause great controversy, as when Slovak and Hungarian wine makers battled for the right to claim the Tokaji brand (they share the Tokaj(i) region with 10% and 90%, respectively).

Although the idea of EU membership did not lose legitimacy, the support for individual measures, as they became apparent, faltered and continued to do so after accession as well.

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<sup>484</sup> Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*.

Whereas the enlargement project began with Eastern Europeans demanding EU norms, and the old members reluctantly supplying them, the conditionality mechanism ended in the West's role as both the supplier *and* the demander of norms. Old member states expected that their legal and social norms would function also in the East. Perceived as universal and inherently legitimate, they should have been "adhered to by others because of [their] reasonableness (all things considered), by [their] minimal disturbance of ongoing practices or the necessary sacrifices of other values, or by [their] expected overall benefit to the community."<sup>485</sup> With respect to some norms this was, in fact, the case. Yet with others, the road was much bumpier. Inconveniently, the issue areas that were particularly sensitive in the East ranked high among the priorities with old member governments, as well as publics.

We have to keep in mind that citizens of the pre-enlargement EU saw disaster prevention as a key justification for permitting the project to proceed in the first place. With this mandate, the Commission officials used the carrots and sticks at their disposal to push hopeful candidates on issues that presented the greatest threats to peace and stability in Eastern Europe.<sup>486</sup> First, bloody ethnic clashes in former Yugoslavia and along the edges of the Russian Federation were enough to make European politicians tread carefully and prevent importing such tensions into their community. Thus, protection of minority rights became one of the key priorities in guiding East European transitions from communism. The second disaster that loomed large as post-communist societies embarked on their westward journey was the Chernobyl nuclear accident that had fundamentally changed perceptions of nuclear power in Europe. As with minority rights, the EU used the leverage it possessed to redefine the understanding of nuclear safety and pressed for decommissioning of the outdated, Soviet-style nuclear plants operating in Eastern Europe.

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<sup>485</sup> Kratochwil, "On Legitimacy," 303.

<sup>486</sup> Grabbe, "European Union Conditionality and the "Acquis Communautaire".

Before long, these two areas also became the display cases for misalignment of expectations on both sides of the EU border.

The typology presented in this dissertation allows us to sort these norms according to their content and their effect on states. The location of minority rights and nuclear safety along the diagonal characterized by incongruence in government and societal responses sheds some light on the difficulties with which they traveled eastward (see figure 8.1). The comparison of minority rights discourses in Slovakia and Lithuania uncovered results consistent with the hypothesis expecting resistance to the norm to occur at the societal level. In Slovakia, attitudes towards minorities fell into three opinion clusters, each of them sharply defined and firmly differentiated from others. The divisiveness of the minority rights discourse is consistent with Slovakia's experience on the policy formulation front, where a lot of stop-and-go measures struggled against the indifference and even hostility from substantial portions of the public. In Lithuania, by contrast, three separate discursive positions reflected much greater levels of consensus, and, what is important, considerable overlap with the individual-rights based version of the norm promoted by Brussels.

The nuclear safety norm enjoyed support from societies, conscious of the danger of nuclear accidents. The support was not as heartfelt as we might have expected, however, because the Slovak, Lithuanian, and the Czech publics remain sensitive to questions of energy security (meaning dependence on Russia). Fears about skyrocketing electricity prices have persisted as well. With these public reactions in mind, and aware of the full cost of reactor decommissioning, governments received the nuclear safety standards reformulated by the G7 in 1992 with hesitation. The analysis of official documents issued in each country and their comparison with the European nuclear safety agenda revealed a sharp dividing line between the EU and the

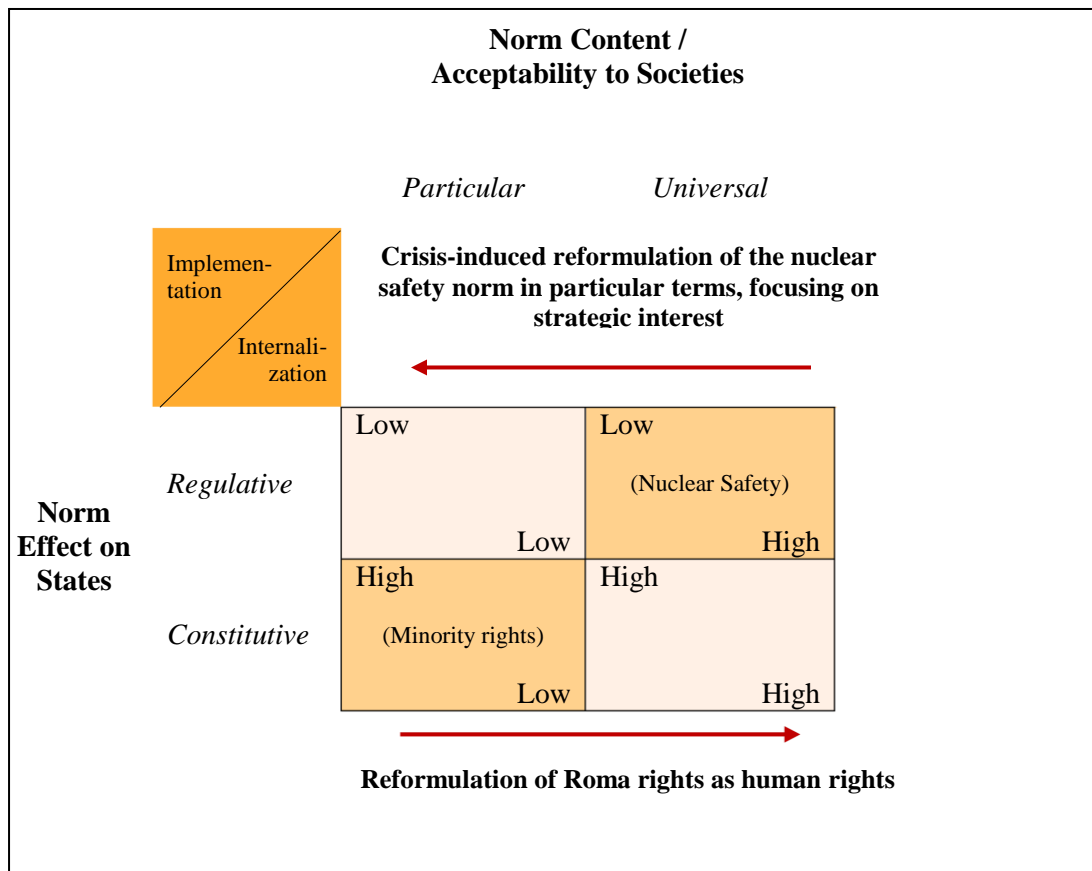
candidates. There is no indication that the three countries viewed nuclear safety as a matter of European identity and in each case concern with own strategic interest prevailed, confirming the expectation of government resistance. This, I have argued, has consequences for the future of nuclear safety in the EU and internationally.

Each set of case studies confirmed the theoretically deduced location of minority rights and nuclear safety in the typology of norms I propose. This static image that the norm classification provides, however, represents only one part of the story about norm adoption in the course of EU enlargement. I described in great detail the sensitivity of these two issue areas in each country. This, in turn, generated a considerable amount of tension in light of the uncompromising demands made on the candidates. The two extension chapters that follow each norm case provide insights about the attempted solutions for these pressures. Figure 8.1 below captures the movements between cells that my two follow-up studies detected.

In connection to minority rights as they played out in Slovakia, the main challenge rested in the disconnect between the local discourse concerning the norm and the external demands seeking fast and permanent solutions to a problem that there was no domestic consensus about. In the case study about Europe's Roma I trace the approaches adopted by non-governmental organizations involved in remedying the persistent exclusion of this minority. Guided by the institutional channels inside the EU and driven by funding opportunities that favored an individual-rights approach, these actors initiated a redefinition of the entire problem. My typology outlined the universal / constitutive cell as the one most likely to meet with success in norm promotion. In a pattern mirroring this expectation, NGOs active at the European level began framing the Roma rights issue as one subsumed by human rights. To the extent that their

efforts have been successful, they have demonstrated the hypothesized possibility of norm evolution, and the potential for shifts between cells in the typology (figure 8.1).

**Figure 8.1** Norm Shifts Within the Typology



There is nothing in my theoretical framework, however, to suggest that all norms will eventually and inevitably gravitate towards the universal / constitutive category. In fact, as the dual comparison of the distinct energy crises in Lithuania and Slovakia has shown, societal support for a norm is no guarantee of its eventual adoption by the governments. Despite the fact that reactor decommissioning is firmly anchored in accession treaties, leaders in both countries



seized every opportunity to reverse this requirement. In Slovakia, the government's decision to restart a recently decommissioned reactor and ignore the increased safety risks demonstrated that even the norm's universal quality is not immune to change. As we know, its universality derives primarily from the shared human vulnerability to radiation and the standardized technical requirements of safety. However, if the public could be convinced that the most basic provision of electricity was in jeopardy (especially in mid-January) and that the safety risk was *relatively* low, the designation of nuclear safety as a universal norm would have to be abandoned. The fact that the interruption in energy supply was caused by Slovakia's eastern partners was not an irrelevant detail. Similarly, in Lithuania a public opinion survey revealed that about one quarter of the population favored their nuclear plant's continued operation, despite the respondents' doubts about its safety. Dependence on Russia seemed like the greater evil. The impact that each crisis had on the perception of nuclear risk in Lithuania and Slovakia proves the importance of differentiating among norms based on the degree of their universality. The malleable content of norms affects the implicit hierarchies among them, which should inform our theorizing on the subject as well.

The approach introduced in this dissertation opens avenues for comparing norms by drawing attention to their origin, to the context surrounding their violation or adoption, and to their institutionalization. It offers a degree of standardization in our study of normative change, while leaving sufficient room for incorporating arguments about country-level variations and about the role of power in shaping norm promotion outcomes. Finally, it implies that if an international norm meets with resistance, this is likely because a competing norm is resisting displacement.

Although we can treat some norms *as if* they were universal based on their intimate connection with the hegemonic order that dictates conditions of legitimacy, we should recognize that any successful challenge to that order will also weaken related norms, and vice versa. This has implications for attempts to cluster international norms with the objective of increasing their collective appeal. This has been the case with climate change, human security, and development. As in the case of EU enlargement, in the global arena the focus on output legitimacy alone cannot guard the anti-climate change agenda from challenges deriving from indirect effects of the norm's (non)implementation.<sup>487</sup> A failure to curb carbon emissions threatens to harm groups that are already disproportionately vulnerable. Meanwhile, measures to avert climate change have serious consequences for the particular development paths that some countries can take, contributing further to international discord on the subject. In addition to pointing out such internal contradictions, we have to be prepared for clashes among purportedly universal norms. For instance, both nuclear safety and climate protection could qualify as such but they actually reflect potentially opposing goals. Nuclear safety calls for restraint in spreading nuclear technologies to new countries that may be inexperienced, non-transparent and potentially possess ulterior motivations in adopting nuclear technology.<sup>488</sup> The struggle against climate change, on the other hand, while boasting equal credentials in the environmental protection and popular appeal realm, in principle favors any measures that would replace carbon-intensive technologies with alternatives. Are these norms directly contradictory? Which should prevail and, based on their respective attributes, which is more likely to be successful?

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<sup>487</sup> Jon Barnett, "Security and Climate Change," *Global Environmental Change* 13, no. 1 (2003).

<sup>488</sup> Steven E. Miller and Scott D. Sagan, "Nuclear Power without Nuclear Proliferation?," *Daedalus* 7-18, no. Fall (2009).

Construction of legitimacy in the international society<sup>489</sup> provides compelling answers to these questions, if we include more than state actors in the process of norm promotion and affirmation. The tangible economic consequences of both climate-change remedies and nuclear safety requirements result in active competition by governments, societies, and corporate actors for control over the norms' meaning. This, in turn, has been affecting their respective appeal and its fluctuation over time. The clash between the climate-change-curbing efforts and calls for a strong nuclear safety norm is most apparent in the recent attempts by nuclear reactor producers to market their products abroad.<sup>490</sup> The nuclear accident at Fukushima in Japan caused demand for nuclear power to falter in established nuclear countries (Germany, Switzerland, or Belgium) and growing natural gas prospects have shifted the economic calculus between these two sources of energy. The risks and cost of nuclear energy have been made newly salient as the concern with climate change persists. In response, many developed countries have been turning to renewable energy sources and increases in overall efficiency. Subject to a different set of constraints, most interested countries in the developing world have not abandoned pursuit of nuclear power but they have become increasingly sensitive to the price of reactors. And as is well known, the main trade-off in the cost of nuclear installations is their safety. The nuclear industry thus faces a difficult dilemma – its most likely customers want cheaper nuclear plants but any risk of accident threatens the future of nuclear power altogether.

These demand and supply issues in the nuclear energy sector are closely related to the demand and supply challenges facing the related international norms. Not even reactor salesmen can afford to ignore the international dispositions towards nuclear energy and it is in their interest to highlight both climate change alleviation and nuclear safety as *compatible* arguments

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<sup>489</sup> Finnemore, *National Interests in International Society*.

<sup>490</sup> "French Nuclear Energy: Under Pressure," *The Economist*, December 17 2011.

in advancing their business agenda.<sup>491</sup> Governments and societies are the core audiences in this process – distinct from one another but linked through the process of domestic political competition and through their shared exposure to crises around the globe, whether climate-related or nuclear. If the solution to the tension between the two norms is to be legitimate and sustainable, norm promoters must avoid norm imposition. This is a situation in which the target (state or society) cannot effectively resist.<sup>492</sup> One way of avoiding this is to focus on intrinsically universal attributes of norms, rather than those imputed by their suppliers. Nuclear safety should enter new contexts as a principle supported by a broad understanding of the underlying risks and the recognition of the danger to humans irrespective of state boundaries. If it travels as a reluctantly accepted rule that will be avoided at the first opportunity, the promotion of nuclear energy and associated norms will amount to a dangerous failure.

When analyzing such patterns of norm promotion, it is worth noting that the norms' embeddedness in a particular hegemonic order can endow them with legitimacy but also opens avenues for their questioning on the basis of that system's deficiencies. As this project has sought to show, many norms we call "international" lack the intrinsic validity that would reach beyond the value confines of the predominant order and should not be mistaken for universal norms. Meanwhile, norms that possess universal attributes remain exposed to cooptation by powerful actors, suggesting that even their broad appeal is no guarantee of success. All along, specific political-historic contexts shape the appeal of individual norms and highlight the role of societies, alongside governments, in generating the demand to meet the always abundant supply of norms.

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<sup>491</sup> Social realities are as influential as material realities in shaping international actors' behavior. Finnemore, *National Interests in International Society*, 128.

<sup>492</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 26.

## APPENDIX

### Interview List

#### **Minority Rights**

##### *Lithuania*

- Andžejevski, Tadeuš, Advisor to the Prime Minister, Government of the Republic of Lithuania, Vilnius, Lithuania, September 30, 2008
- Austrevicius, Petras, Former Chief Negotiator of Lithuania's accession to the EU and Member of the Seimas, Vilnius, Lithuania, September 19, 2008
- Beresnevičiute, Vida, Senior Researcher, Centre of Ethnic Studies, Institute for Social Research, Vilnius, Lithuania, September 25, 2008
- Cecergis, Donatas, Head, European Information Office, Vilnius, Lithuania, October 13, 2008
- Dimitrieva, Larisa, Member, Vilnius Municipal Council, Vilnius, Lithuania, November 12, 2008
- Gaidys, Vladas, Director, Institute for Social Research, Vilnius, Lithuania, October 23, 2008
- Leončikas, Tadas, Senior Researcher, Centre of Ethnic Studies, Institute for Social Research, Vilnius, Lithuania, November 5, 2008
- Michniova, Tatjana, Director, Pushkin Literary Institute, Vilnius, Lithuania, October 14, 2008
- Mickevičius, Henrikas, Director, Human Rights Monitoring Institute, Vilnius, Lithuania, October 1, 2008
- Neverovič, Jaroslav, Vice-Minister of Foreign Affairs, MFA of the Republic of Lithuania, Vilnius, Lithuania, September 26, 2008
- Novopolskaja, Svetlana, , Roma Public Community Center, Vilnius, Lithuania, October 15, 2008
- Ramonaite, Aine, Professor, Political Science, Vilnius University, Vilnius, Lithuania, September 22, 2008
- Rozova, Irina, Member of Seimas, Russian Alliance, Vilnius, Lithuania, October 6, 2008
- Samuolytė, Jolanta, Research Director, Human Rights Monitoring Institute, Vilnius, Lithuania, October 1, 2008
- Tyčina, Josif, Roma Public Community Center, Vilnius, Lithuania, October 15, 2008
- Vaskelevicius, Kestutis, Deputy Advisor to the President, Foreign Policy Group, Office of the President of the Republic of Lithuania, Vilnius, Lithuania, September 19, 2008
- Vidtman, Stanislav, Deputy Director of the Department of National Minorities, Ministry of Interior Affairs, Vilnius, Lithuania, October 1, 2008
- Vilpisauskas, Ramunas, Advisor to the President, Economic and Regional Development Group, Office of the President of the Republic of Lithuania, Vilnius, Lithuania, September 23, 2008

## *Slovakia*

Balog, Maroš, Coordinator, Regional Office of the Roma Plenipotentiary in Banská Bystrica, Banská Bystrica, Slovakia, February 9, 2009

Bučková, Andrea, Program Coordinator, Roma Cultural Association, SR, Banská Bystrica, Slovakia, March 19, 2009

Daniel, Stanislav, Research and Advocacy Officer, European Roma Rights Center in Budapest, Washington, DC, USA, April 7, 2011

Debrecéniová, Janka, Deputy Director, Citizen, Democracy, and Responsibility, Brezno, Slovakia, January 21, 2009

Drál, Peter, Program Manager and Lecturer on Human Rights Education and Intercultural Education Program, Milan Simecka Foundation, Bratislava, January 16, 2009.

Gabčová, Lýdia, Project Coordinator, Open Society Institute – Slovakia, Bratislava, Slovakia, January 13, 2009

Gallová Kriglerová, Elena, Research Fellow, CVEK – Center for the Research of Ethnicity and Culture, Bratislava, Slovakia, January 12, 2009

Jančulová, Milica, Director, Department of Human Rights and Minorities, Office of the Slovak Government, April 29, 2009.

Joklova, Miriam, Human Rights and Council of Europe Department, Ministry of Foreign Affairs of the Slovak Republic, Bratislava, Slovakia, January 16, 2009

Jurík, Martin, Coordinator for International Cooperation, Roma Plenipotentiary Office, Bratislava, Slovakia, January 14, 2009

Lajčáková, Jarmila, Research Fellow, CVEK – Center for the Research of Ethnicity and Culture, Bratislava, Slovakia, March 18, 2009

Mikloško, František, Member, Human and Minority Rights Committee, Parliament of the Slovak Republic, Bratislava, Slovakia, January 14, 2009

Mirga, Ivan, Coordinator, Regional Office of the Roma Plenipotentiary in Spišská Nová Ves, Spišská Nová Ves, Slovakia, February 9, 2009

Petoetz, Kálman, Fellow, Forum Minority Research Institute, Šamorín, Slovakia, March 18, 2009

## *Brussels / EU institutions*

Antoine-Gregoire, Jean-Louis, Civil Liberties, Justice, and Home Affairs Unit, European Parliament, Brussels, Belgium, April 1, 2009

Savelina Danova, Research and Advocacy Officer, European Roma Rights Center, Budapest, June 20, 2007

Duka-Zolyómi, Árpád, Member for Slovakia, European Parliament, Brussels, Belgium, April 2, 2009

Firkavičiūtė, Karina, Attache for Research, Permanent Representation of the Republic of Lithuania to the EU, Brussels, Belgium, March 12, 2009  
Harris, Geoffrey, Human Rights Unit, European Parliament, Brussels, Belgium, March 27, 2009  
Orsagová, Miriam, EPP Group Assistant, European Parliament, Brussels, Belgium, April 3, 2009  
von Lingen, Ann-Isabelle, Program Officer, Open Society Institute - Brussels, Brussels, Belgium, March 25, 2009  
Wilkens, Andre, Director, Open Society Institute – Brussels, Brussels, Belgium, July 5, 2007

## **Nuclear Safety**

### *Czech Republic*

Drábová, Dana, Head, Nuclear Safety Authority of the Czech Republic, Prague, Czech Republic, January 23, 2009  
Magersteinova, Daniela, Southbohemian Mothers, Jihoceske Matky, České Budějovice, Czech Republic, December 11, 2009  
Pohorelický, Jan, Project development specialist, Division for Nuclear Power Plant Construction, ČEZ, Prague, Czech Republic, January 23, 2009  
Sequens, Edvard, Director, Calla - Sdružení pro záchranu prostředí, České Budějovice, Czech Republic, December 11, 2009  
Stráský, Dalibor, Former Advisor to the Minister, Ministry of Environment, České Budějovice, Czech Republic, December 11, 2009

### *Lithuania*

Austrevicius, Petras, Former Chief Negotiator of Lithuania's accession to the EU and Member of the Seimas, Vilnius, Lithuania, September 19, 2008  
Gaidys, Vladas, Director, VILMORUS, Vilnius, Lithuania, October 23, 2008  
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